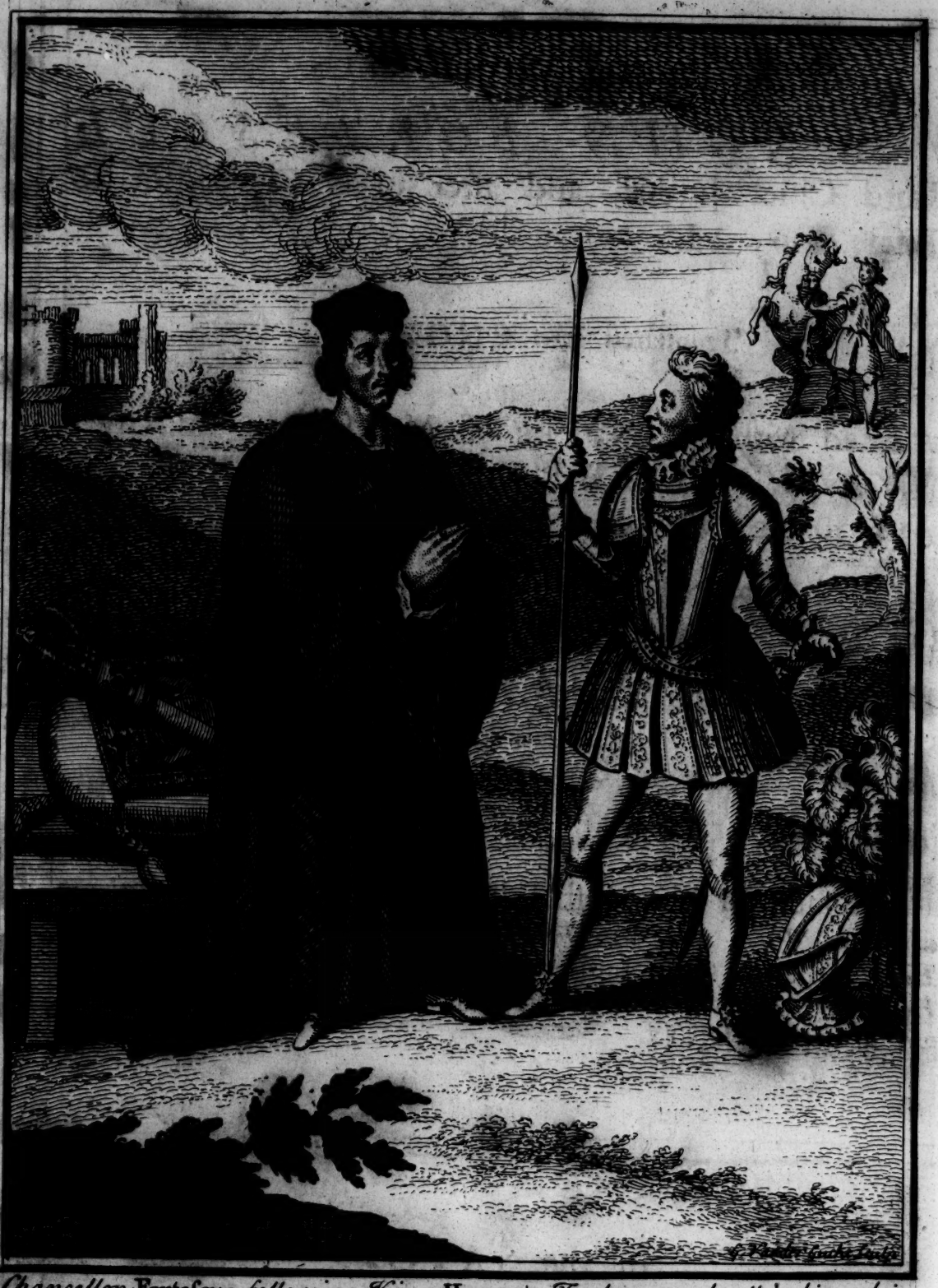

III
G R
HONI SOIT QUI MAL Y PENSE
DIEU ET MON DROIT





Chancellor Fortescue *following King* Henry's *Fortune, and attending his Son* Edward *into* France, *wrote this Book to recommend the Laws of* England *to the Esteem and Protection of that Young Prince.*

1608.

DE LAUDIBUS LEGUM ANGLIÆ.

Written Originally in LATIN

By Sir *JOHN FORTESCUE*
Lord Chief Juſtice, and after Lord Chancellor to King *Henry* VI.

Tranſlated into ENGLISH,

Illuſtrated with the NOTES of Mr. *Selden*, and Great Variety of REMARKS with Reſpect to the ANTIQUITIES, HISTORY, and LAWS of ENGLAND.

To which are prefix'd

Mr. *Selden* to the READER, and a Large HISTORICAL PREFACE.

To the whole are added

The Preface of the firſt Editor, with the Teſtimonies of *Bale*, *Pits*, and *Du Freſne*; the Summs of Sir *Ralph de Hengham*, Lord Chief Juſtice to King *Edward* I. commonly call'd *Hengham Magna* and *Hengham Parva*, with Mr. *Selden*'s NOTES; and a Copious INDEX.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Aſſigns of *E. Sayer*, Eſq;) for R. Gosling, at the *Crown* and *Mitre* againſt *Fetter-lane End*, *Fleet-ſtreet*. MD CC XXXVII.

TESTIMONIES of *FORTESCUE.*

IF the Noblemen of this Realm would ſee their Children brought up in ſuch Manner, that they ſhould have Learning and Knowledge more than they commonly have, eſpecially of the Grounds and Principles of the Law of the Realm, (tho' they had not the cunning of the whole Body of the Law, but after ſuch Manner as Mr. *Forteſcue* in his Book *De Laudibus Legum Angliæ* advertiſeth the Prince to have) I ſuppoſe it would be a great Help hereafter to the Miniſtration of Juſtice, and a right great Gladneſs to all People. *Doctor and Student, D.* 2. *c.* 46.

Sir *Walter Raleigh* calls *Forteſcue* that Notable Bulwark of Our Laws. *Hiſt. of the World, pt.* 1. *B.* 2. *c.* 4. §. 16. *p.* 247. *Ed.* 1614.

SERENISSIMO PRINCIPI

FREDERICO LUDOVICO

WALLIÆ PRINCIPI

REGI DESIGNATO,

Electoral. Principi Brunſwic-Luneburg,
Duci Cornub. & Rottiſaye,
Duci Edinburgi,
Marchioni Inſulæ de Ely,
Comiti Ceſtriæ & de Eltham,
Vicecomiti Lanceſton,
Baroni de Snawdon & de Renfrew,
Domino Inſular. & Seneſcallo Scotiæ
ac
Nobiliſſimi Ordinis Periſcelidis Equiti;

ET

CELSISSIMO PRINCIPI

GULIELMO AUGUSTO

DUCI CUMBRIÆ,

Marchioni de Berkhamſtead,
Comiti de Kinnington,
Vicecomiti Trematon,
Baroni Inſulæ de Aldernay
Ac Nobiliſſimi Ordinis Periſcelidis,
Hanc Verſionem,
Hunc Librum, de Laudibus Legum *Angliæ*,
Omni Cultu & Veneratione,

L. M. D. D. D. C. Q.

Pro JOHANNE FORTESCUE.

A. D. 1443. an. 21 H. 6. Pat. 21 H. 6. p. 2. m. 9.

Rex omnibus ad quos, &c. Salutem.

Sciatis quod,

CUM nuper, per Literas noſtras Patentes, quarum data eſt apud Weſtmonaſterium Sexto die Februarij anno regni noſtri viceſimo *Conceſſerimus*, dilecto & fideli noſtro *Johanni Forteſcue* Militi, per nomen *Johannis Forteſcu*, unum Dolium vini percipiendum annuatim, pro termino vitæ ſuæ, in Portu Villæ noſtræ Briſtolliæ, per manus Capitalis Pincernæ noſtræ & Hæredum noſtrorum, vel ejus Deputati ibidem, qui pro tempore fuerit, prout in eiſdem Literis Patentibus pleniùs continetur.

Nos tamen de uberiori Gratia noſtra & ex mero motu noſtro, ac pro bono ſervitio quod idem *Johannes Forteſcue* nobis impendit & impendet in futurum, conceſſimus eidem *Johanni* unum aliud Dolium Vini, percipiendum annuatim à Feſto Sancti Michaelis Archangeli ultimo præterito, pro termino Vitæ ſuæ, in Portu Prædicto, per manus Capitalis Pincernæ noſtræ & Hæredum noſtrorum, vel ejus Deputati ibidem, qui pro tempore fuerit, ſimul cum prædicto Dolio Vini Annuo, quod ei, ut præmittitur, *Conceſſimus*; eo, quod expreſſa mentio de aliis Donis & Conceſſionibus, per Nos eidem *Johanni* ante hæc tempora factis, hìc facta non exiſtit, non obſtante. In cujus, &c.

Teſte Rege apud Weſtmonaſterium 23° die Maij.

Per ipſum Regem & de Data Prædicta, auctoritate Parliamenti.——— *Rymer*, Vol. 11. p. 28. v. Vol. 12. pp. 196, 356.

Johannes Gough, Yoman, qui in Obſequio Regis in Comitiva Dilecti Regis *Johannis Forteſcue*, Armigeri in Guerris Regis in Partibus tranſmarinis vel ſupra mare profecturus eſt, &c. Ib. To. 13. 372. b. de *Protectionibus*.

Adrianus Forteſcue, Miles.

Johannes Forteſcue, Armiger. A. D. 1513.

Sir *Adrian Forteſcue*, Knt. one of the *Apunctuati ad intendendum Reginæ*. A. D, 1520. temp. Hen. 8. ib. 712.

Ad Status Generales ſuper Salva Cuſtodia de Oſtend.— Signed, amongſt others, by *John Forteſcue*. Dat. Ap. 7. 1590. ib. To. 16. 55. Another Inſtrument May 8th 1590. ſigned by him. (ib. p. 62.) Another Inſtrument ſigned by him, Aug. 11. 1590.—— A Special Commiſſion to him, among others, A. D. 1593. concerning the Jeſuits. V. ib. pp. 343, 412, 421, 425, 489, 494, 5. 497, 597, 641.

Nicholas Forteſcue. Ib. To. 17. 388, 457, 490, 493, 595.

ERRATA.

Page xxv in the Preface, Line 6 from the Bottom, for *quia* read *qua*.
Page xxxii in the Preface, Line 4 from the Bottom, for *Eſt-Angles* read *Eaſt-Angles*.

Mr.

Mr. *SELDEN*'s Preface

TO THE

READER.

THIS Author, Sir *John Forteſcue*, was Chief Juſtice to *Hen.* VI. as the Records of the later Half of his Reign every where ſhew; and that he might *Statum ſuum decentius manutenere*, in *part.* 1. *rot. pat.* 20 *Hen.* VI. *Membran.* 10. an Annuity of CLXXX Marks is given him out of the Hamper, with CXVI *s.* XI *d. q. Percipiendum ſingulis annis ad feſtum natalis domini, pro una roba & furrura pro eadem, erga idem feſtum.* And LXVI *s.* VI *d. ſingulis annis ad feſtum Pentecoſtes, pro una roba & linura pro eadem, erga idem feſtum.* He is called his Chancellor alſo. In this Book his Title, given by himſelf, is *Cancellarius Angliæ*. And in his *Declaration*, or rather *Retractation* of that he had written againſt the Title of the Houſe of *York*, himſelf puts in the Mouth of a Friend of his expoſtulating with him, theſe Words, **Conſidering that ye were the Chief Chancellor to the ſaid late King.** It ſeems, being with *Henry* VI. driven into *Scotland*, he was made his Chancellor, the Memory whereof (as it could hardly be otherwiſe) wants in the Patent Rolls. His Books, which I have ſeen, are three: This now newly publiſhed, his *Difference* between *Dominium Regale* and *Dominium Politicum* and *Regale*, and that *Declaration* touching the Title of the Crown. Neither of the two laſt were ever publiſhed, but they remain MSS. in divers Hands. As touching his Deſcent, by good Teſtimony, he is made Son to *Henry Forteſcue*, Son of Sir *John Forteſcue*, Knight, (Captain of *Meaux*, and Governor of *Brie* in *France* under *Hen.* V.) who was ſecond Son of *William Forteſcue* of *Wimeſton* in *Devonſhire*, Eſq;

Becauſe he was *Engliſhed* by him that firſt publiſhed him, this, Part of the Title and the Notes on him are in *Engliſh*. What he hath of the *Commendations of the Law of* England muſt not be expected to be ſo copious, as if all, that might thereof have been ſaid, had been hunted for by him to be here congeſted. He ſhews, that he inſtructed the young Prince, and only in ſome ſuch few Occurrences of our Trials and Poſitions, as might be without Difficulty apprehended by a Mind ſo tender and ſtrange to the Courts of Judicial Contention. Neither gives he enough to ſatisfy or the Malice, or the Ignorance of ſome foul-mouthed Declaimers againſt it, who for the moſt part (if they deſcend to Particulars, and make a Caſe to find Fault withal,) either ridiculouſly compact Things incompatible, juſt like the Sycophant in that Geography of his in *Trinummus* IV. 2. 88, 98.

Omnium primum in Pontum advecti ad Arabiam terram ſumus,
And thence
Ad Caput amnis, quod de cœlo exoritur ſub ſolio Jovis:

Or elſe, meaſuring an eſtabliſhed and univerſal Proceeding or Poſition only by their own Damage, never coming near Apprehenſion of the true Reaſon,

Pro JOHANNE FORTESCUE.

A. D. 1443. an. 21 H. 6. Pat. 21 H. 6. p. 2. m. 9.

Rex omnibus ad quos, &c. Salutem.

Sciatis quod,

CUM nuper, per Literas noſtras Patentes, quarum data eſt apud Weſtmonaſterium Sexto die Februarij anno regni noſtri viceſimo *Conceſſerimus*, dilecto & fideli noſtro *Johanni Forteſcue* Militi, per nomen *Johannis Forteſcu*, unum Dolium vini percipiendum annuatim, pro termino vitæ ſuæ, in Portu Villæ noſtræ Briſtolliæ, per manus Capitalis Pincernæ noſtræ & Hæredum noſtrorum, vel ejus Deputati ibidem, qui pro tempore fuerit, prout in eiſdem Literis Patentibus pleniùs continetur.

Nos tamen de uberiori Gratia noſtra & ex mero motu noſtro, ac pro bono ſervitio quod idem *Johannes Forteſcue* nobis impendit & impendet in futurum, conceſſimus eidem *Johanni* unum aliud Dolium Vini, percipiendum annuatim à Feſto Sancti Michaelis Archangeli ultimo præterito, pro termino Vitæ ſuæ, in Portu Prædicto, per manus Capitalis Pincernæ noſtræ & Hæredum noſtrorum, vel ejus Deputati ibidem, qui pro tempore fuerit, ſimul cum prædicto Dolio Vini Annuo, quod ei, ut præmittitur, *Conceſſimus*; eo, quod expreſſa mentio de aliis Donis & Conceſſionibus, per Nos eidem *Johanni* ante hæc tempora factis, hìc facta non exiſtit, non obſtante. In cujus, &c.

Teſte Rege apud Weſtmonaſterium 23° die Maij.

Per ipſum Regem & de Data Prædicta, auctoritate Parliamenti.——— *Rymer*, Vol. 11. p. 28. v. Vol. 12. pp. 196, 356.

Johannes Gough, Yoman, qui in Obſequio Regis in Comitiva Dilecti Regis *Johannis Forteſcue*, Armigeri in Guerris Regis in Partibus tranſmarinis vel ſupra mare profecturus eſt, &c. Ib. To. 13. 372. b. de *Protectionibus*.

Adrianus Forteſcue, Miles.

Johannes Forteſcue, Armiger. A. D. 1513.

Sir *Adrian Forteſcue*, Knt. one of the *Apunctuati ad intendendum Reginæ*. A. D, 1520. temp. Hen. 8. ib. 712.

Ad Status Generales ſuper Salva Cuſtodia de Oſtend.— Signed, amongſt others, by *John Forteſcue*. Dat. Ap. 7. 1590. ib. To. 16. 55. Another Inſtrument May 8th 1590. ſigned by him. (ib. p. 62.) Another Inſtrument ſigned by him, Aug. 11. 1590.—— A Special Commiſſion to him, among others, A. D. 1593. concerning the Jeſuits. V. ib. pp. 343, 412, 421, 425, 489, 494, 5. 497, 597, 641.

Nicholas Forteſcue. Ib. To. 17. 388, 457, 490, 493, 595.

ERRATA.

Page xxv in the Preface, Line 6 from the Bottom, for *quia* read *qua*.
Page xxxii in the Preface, Line 4 from the Bottom, for *Eſt-Angles* read *Eaſt-Angles*.

Mr.

Mr. *SELDEN*'s Preface

TO THE

READER.

THIS Author, Sir *John Forteſcue*, was Chief Juſtice to *Hen.* VI. as the Records of the later Half of his Reign every where ſhew; and that he might *Statum ſuum decentius manutenere*, in *part.* 1. *rot. pat.* 20 *Hen.* VI. *Membran.* 10. an Annuity of CLXXX Marks is given him out of the Hamper, with CXVI *s.* XI *d. q. Percipiendum ſingulis annis ad feſtum natalis domini, pro una roba & furrura pro eadem, erga idem feſtum.* And LXVI *s.* VI *d. ſingulis annis ad feſtum Pentecoſtes, pro una roba & linura pro eadem, erga idem feſtum.* He is called his Chancellor alſo. In this Book his Title, given by himſelf, is *Cancellarius Angliæ.* And in his *Declaration*, or rather *Retractation* of that he had written againſt the Title of the Houſe of *York*, himſelf puts in the Mouth of a Friend of his expoſtulating with him, theſe Words, **Conſidering that ye were the Chief Chancellor to the ſaid late King.** It ſeems, being with *Henry* VI. driven into *Scotland*, he was made his Chancellor, the Memory whereof (as it could hardly be otherwiſe) wants in the Patent Rolls. His Books, which I have ſeen, are three: This now newly publiſhed, his *Difference* between *Dominium Regale* and *Dominium Politicum* and *Regale*, and that *Declaration* touching the Title of the Crown. Neither of the two laſt were ever publiſhed, but they remain MSS. in divers Hands. As touching his Deſcent, by good Teſtimony, he is made Son to *Henry Forteſcue*, Son of Sir *John Forteſcue*, Knight, (Captain of *Meaux*, and Governor of *Brie* in *France* under *Hen.* V.) who was ſecond Son of *William Forteſcue* of *Wimeſton* in *Devonſhire*, Eſq;

Becauſe he was *Engliſhed* by him that firſt publiſhed him, this, Part of the Title and the Notes on him are in *Engliſh.* What he hath of the *Commendations of the Law of* England muſt not be expected to be ſo copious, as if all, that might thereof have been ſaid, had been hunted for by him to be here congeſted. He ſhews, that he inſtructed the young Prince, and only in ſome ſuch few Occurrences of our Trials and Poſitions, as might be without Difficulty apprehended by a Mind ſo tender and ſtrange to the Courts of Judicial Contention. Neither gives he enough to ſatisfy or the Malice, or the Ignorance of ſome foul-mouthed Declaimers againſt it, who for the moſt part (if they deſcend to Particulars, and make a Caſe to find Fault withal,) either ridiculouſly compact Things incompatible, juſt like the Sycophant in that Geography of his in *Trinummus* IV. 2. 88, 98.

Omnium primum in Pontum advecti ad Arabiam terram ſumus,
And thence
Ad Caput amnis, quod de cœlo exoritur ſub ſolio Jovis:

Or elſe, meaſuring an eſtabliſhed and univerſal Proceeding or Poſition only by their own Damage, never coming near Apprehenſion of the true Reaſon,

rail at it, with like Judgment, as the Paraſite, in a loſt * Comedy of *Plautus*, doth at the certain Courſe of Sun-Dials, being thence only moved, becauſe the Shadow went not ſo faſt as his Stomach, which, when he was a Child, was the only Dial, and that

———*iſte monebat eſſe, niſi quum nihil erat,*
Nunc etiam quod eſt non eſt, * *niſi* Soli *lubet.*

But no Place is here for more of this, and *nos hac a Scabie tenemus ungues.* To this Edition are added the *Summes* of Sir *Ralph de Hengham*, Chief Juſtice to *Edward* I. never till now printed; in whom although moſt of the Learning be touching *Eſſoigns*, *Defaults* and Courſe of Proceedings in ſuch Actions, which are in ſeldom Uſe at this Day, yet divers Things occur both ſpecially obſervable in what he hath touching thoſe Proceedings (which a Profeſſor of the Law cannot but wiſh to know,) as alſo he often otherwiſe gives Light to the Cuſtoms or Law of his Time, whence, as through an Anceſtor of the Right Line, we muſt deduct that of the preſent. Of him in the Preface to the Reader, before him, enough is ſaid, and of his *Summes*. Of his Language, which with the reſt of our Common Law *Latin* is accuſed of Barbariſm, ſomewhat is there brought in Excuſe. That Preface was thought fit to ſpeak *Latin*, the Author of the Book himſelf being publiſhed only in that Tongue. But the Notes are *Engliſh*. For what other Readers than *Engliſh* are to be expected? Many an Ignorant had been deterred by pure *Latin*, and to have uſed Barbariſm in them would have turned the Stomach of a Polite Reader. Though divers Copies of *Hengham* were examined in preparing this, yet could not a perfect one be extracted from them all. As one helped another, Choice was ſo made, that this might be the beſt; which yet is not without many faulty Paſſages. So faithfully it is publiſhed from the MSS. that even the falſe Language, which, by Conſent of old Copies, appeared not to be the Tranſcriber's, but proceeded from the Age's either Negligence or Ignorance, is religiouſly retained; ſo ſhould the loſt Monuments of ancient Writers be given to the Publick; ſo ſhould we abſtain from wronging their *Manes*. Some Places, that the erring Hands of ſuch as anciently copied him corrupted, are by Way (mongſt other Obſervations collected in the Heat of the Preſs) noted, and either by Conjecture reſtored, explained, or marked with Aſterisks, left to better Judgment. The Varying of Letter in the Print, is only to lead the Reader's Eye the ſooner to what he may look after. Farewell, from the *Inner Temple*, *September* XXIV. CIↃ.DC.XVI.

* Tit. Biſ. Compreſſa. Bœotia Ed. Gron. To. 2. p. 573.
† *Salm.* Non eſtur niſi.

I THE

THE PREFACE.

THE Province I have taken upon me in the preſent Publication, is founded upon a Principle of acquitting myſelf, in ſome Sort, a good Citizen; and muſt be reſolved into a Zeal of doing what Honour and Service I can to our moſt excellent Conſtitution. This Treatiſe has long lain hid in Obſcurity, under a bad Tranſlation and other Imperfections: The Great Mr. *Selden* was not at Leiſure to do every Thing: As far as he was concerned, it is performed with *Good* Learning and much Exactneſs. Mr. *Waterhouſe*'s Labours in the ſame Way, under the Title of *Commentaries*, are very *jejune* and tedious, both as to Matter and Style; and evidently make appear he could not have given a better Tranſlation of his learned Author, than Mr. *Mulcaſter* had done many Years before. Thus much may ſuffice to ſhew my Intention, and the honeſt Motives, which have induced me to appear in Print. Deſign of the Tranſlator.

The Notes of Mr. *Selden* upon our Author are curſory, and ſeem *calculated to gratify the Importunity of a Bookſeller*, and thereby to recommend a new Edition: I have preſerved Mr. *Selden* intire; it would have been injurious to the Memory of ſo great a Man, and alſo to the learned World, to have done otherwiſe; I have preſerved that little out of Mr. *Waterhouſe*'s *Commentary*, which I could think in any wiſe conducing to my Purpoſe, (*viz.*) The Explanation of our Author, and the neceſſary Information of the Reader; which I acknowledge all along with a particular Note of Reference: I muſt do Mr. *Waterhouſe* all *common* Juſtice, and allow him to be a Man of great Reading and various Learning; I am indebted to him for a great many Hints, which I have improved from Authors and Editions of Books, which he had never the Opportunity of ſeeing; as having been publiſhed ſince his Time. The Notes and Remarks are *Critical*, *Moral* and *Political*; and, indeed, the conciſe Method, in which the following Treatiſe is written, ſeemed to me to require *ſome enlarging upon*. I have obſerved a due Regard to my Vouchers and Authorities, and have referred my Reader to them very minutely: Before the general Index, I have given a Catalogue of the moſt conſiderable Authors which I have had Occaſion to quote, and the Editions I have uſed. In the Courſe of my Reading for more than two Years paſt, many Things have fallen in with the main of the Subject our Author treats of, which have added much to the Bulk of the *ſaid* Notes and Remarks. His Method.

This excellent Treatiſe has the general good Teſtimony of our Hiſtorians and Lawyers; who, upon all Occaſions, concur in giving the Great Author the Character of a Politician *ſincere* and *unexceptionable*; for his Learning *various* and *tranſcendent*; that his An Account of this Treatiſe.

Reflexions

Reflexions and Reaſons are *ſolid* and *juſt*: As ſuch, it ought to be put into the Hands of our Princes of the Blood, of our young Nobility and Gentry: It can't but inſpire them with generous Sentiments, and raiſe in their Minds a ſincere Love for their Country and its excellent Frame of Government: And, unleſs they are inſtructed in what is our Original Conſtitution, what are the Ancient Rights and Privileges thereof, they can never be able to defend it, as they ought, againſt thoſe (*a*) who make it their profeſt Buſineſs to cry it down: With this View I know no Writer of equal Authority, who takes in and conſiders all the moſt material Parts of our Conſtitution, and recommends them in the moſt *agreeable* and uſeful Manner: With the ſame View I have faithfully endeavoured to raiſe ſuch neceſſary Obſervations as might, with ſmall Study and much Pleaſure, inform the Underſtanding and entertain the Reader at the ſame Time: Under a Conſciouſneſs that my ſingle Authority could be of no great Weight, I have conſulted all ſuch Books of any Character, as I could come at with any tolerable Convenience.

Our preſent happy Circumſtances.

It is an happy Circumſtance when there is a Prince on the Throne of known Experience, Sagacity and Penetration; who hath for many Years applied himſelf to the Study of our Laws, Manners and Cuſtoms. It is a true Obſervation, "That that Prince, who hath "no Wiſdom of his own, can never be well adviſed." Whenever therefore this Qualification is added to the former, the Hopes and Expectations of a Nation may juſtly be raiſed: For, as his own good Diſpoſition will prevent him from making any Perſonal Attempts upon our Liberties; ſo his Knowledge of our Conſtitution will ſecure both him and us from the Impoſitions and Deſigns of *miſchievous Stateſmen*. Such is our Happineſs under a wiſe and gracious Prince, ruling by excellent and wholeſome Laws! an Example and Authority derived from an excellent Father, his Auguſt Predeceſſor, (*whom we no longer lament, becauſe he is ſo well ſucceeded,*) and there can be no Doubt, but that the Example his preſent Majeſty gives, will have a due Effect and Influence; and that the ſame Laws will be piouſly tranſmitted to the next in Succeſſion.

The Author's Deſign.

The Author's Deſign in writing this learned Treatiſe, *de laudibus Legum Angliæ*, was to ſhew the Excellency of the *Engliſh* Laws and Conſtitution. It was wrote in *France*, while he attended upon Prince *Edward*, (whither the ſaid Prince was forced to retreat,) in which he recommends the Laws of *England* to the Eſteem and Protection of his Prince: It is writ with a great Simplicity of Style, without any the leaſt Affectation, in the Way of Dialogue. A very ingenious (*b*) Author obſerves, that "Some of the fineſt Treatiſes "of the moſt Polite *Latin* and *Greek* Writers are in Dialogue, "as many very valuable Pieces of *French*, *Italian* and *Engliſh* ap"pear in the ſame Dreſs." And this our Author has managed with ſo little Preface or Ceremony, other than what was barely neceſſary and to keep up Decorum, that the Subject falls in very naturally, and is ſo familiariſed, as all along to excite the Prince's Curioſity, and to enforce the Argument effectually: The (*c*) Reaſon aſſigned

(*a*) *Atkins* of the Power, &c. of Parliaments, *p.* 14.
(*b*) Mr. *Addiſon*'s Works I. 451. *v. Sigon.* de Dialogo. (*c*) *Nicholſon* III. 164.

by its learned Author for writing this Piece is for the Uſe of the young Prince, from a Concluſion, that ſuch a martial Hero, as he deſcribes him to be, would want no other Qualification for a Throne, but an Acquaintance with the Laws, which were to be the Guide and Rule of his Government; but 'tis reaſonably believed, that it had a more early Original; (*d*) *William de la Pole* Duke of *Suffolk*, (*Henry* VI.'s great Favourite and Flatterer,) endeavoured to bring in the Uſe of the Civil Law, which obliged the Chancellor to write in Commendation of our own Laws, preferring them (for the Government of this Land) before the other: There ſeems to be another Reaſon, (*viz.*) *Hen.* VI.'s Queen, being a Niece to the Queen of *France*, and a Native of that Country, (where that Plant, called *Arbitrary Power*, being one of the Branches of the *Civil Law*, preſides and flouriſhes,) continually whiſpered in the Royal Ear, the great Renown of the Civil Laws, by which *France* was governed, and which are advanced in Glory above all other Laws: One of its Maxims is, "That the Regal Power is "Supreme, Sovereign, and abſolutely above all Laws." In the Treatiſe before us, our Author endeavours to ſhew the Advantage of a Conſtitution governed by ſtated Laws, in the making of which the Subject has an Intereſt, above a Government which is wholly reſolved into the Abſolute Pleaſure of the Prince, and raiſes the Diſtinction between an Abſolute and Limited Monarchy: This was what he afterwards enlarged upon in a particular Treatiſe, publiſhed, with ſome Remarks, by the preſent Sir *John Forteſcue*, a worthy Deſcendant from the Chancellor, as he has deſervedly the Character of a general Scholar, of one very well verſed in the Northern and *Saxon* Antiquities, and ſits in one of the Supreme Courts of Judicature with Applauſe, and to general Satisfaction.

Our Author proves, that the **Common Law** is the moſt rational, as well as the moſt (*e*) antient in *Europe*. That the Conviction of Criminals by Juries, and without Racking, is more juſt and humane, than the Methods of neighbouring Nations; our Challenging of Panels, Writs of **Attaint** upon corrupt Verdicts, and the uſual Wealth of our Jurors, ſuch Securities to the Lives and Property of the Subject, as other Countries are incapable of affording; that our Kings are greater and more potent in the Liberties and Properties of their People, than Arbitrary Tyrants in the Vaſſalage of their Slaves; that the Civil Law is more unreaſonable than ours in the Legitimation of Children born before Marriage; as alſo in its Axiom, *Partus ſequitur Ventrem*, Tuition of Orphans, *&c.* That our Inns of Court are more convenient for the Study of the *Engliſh* Law, than our Univerſities; and that the Degree of **Serjeant at Law** is as Honourable, as that of *Doctor* in the *Univerſities*: And, in the laſt Place, that the Proceedings in our Courts of Juſtice are leſs Dilatory than in thoſe of other Nations.

I obſerve above, that the Book concerning the Difference between an abſolute and limited Monarchy was, probably, written afterwards; my Reaſon is, becauſe he never refers to, or quotes it in this Book *de Laudibus*.

I ſhall give at the End of the Preface a Catalogue of the ſeveral Books and Tracts writ by our Author; and where they may

(*d*) 3 *Inſt.* 208. (*e*) *Temple* Introd. 312.

be found. I am ſurpriſed that Biſhop (*f*) **Nicholſon**, whoſe particular Province it was, ſhould be ſo little informed or ſo negligent in this Article; an Author otherwiſe very accurate, and never enough to be commended for his great Knowledge, and for what he has communicated with reſpect to the *Engliſh*, *Scotch*, and *Iriſh* Antiquities (*g*).

Corruption of the Law.

The Reigns of *Hen.* VI. and *Edw.* IV. abounded with learned Men in the Law. This appears by the ſecond Part of the Year-Book *Hen.* VI. which is full of excellent Learning (*h*). The Knowledge and Practice of the Law were then in high Credit, and our Chancellor was contemporary with many expert Sages of the Law, amongſt whom was *Littleton* (*i*), the famous *Engliſh* Lawyer; at a Time when the Law was not ſo * lucrative, as it became afterwards. By what he ſays in Commendation of the Trial of Perſons and Cauſes by a (*k*) Jury of XII Men, this Method ſeems to have been then in great Perfection, and the Puniſhment for giving a *falſe Verdict* was ſeverely exacted. How it comes to paſs, that this excellent Part of our Conſtitution warps from its firſt Purity, and is leſs ſacred than it was formerly, is to be accounted for from

Of Barratry.

a litigious Principle and male Practice, from a common moving, exciting, or maintaining of Suits or Quarrels, either in Courts, or in the Country; and this is called **Barratry**: The Perſon concern'd in the Act of **Barratry** is denominated *Communis Barractator*; no one can be a **Barrator** in reſpect of one Act only: He is to be proceeded againſt by (*l*) *Statute*. It is ſaid, that Offenders of this Kind, if they be common Perſons, are to be puniſhed by Fine and Impriſonment, and bound to their good Behaviour: If they be of any Profeſſion relating to the Law, that they ought to be further puniſhed, by being diſabled to practiſe for the future (*m*).

Maintenance.

A ſecond Cauſe, why Juries behave more corruptly than in former Times, may be reſolved into Acts of **Maintenance**; that is, "an unlawful taking in hand, or upholding of Quarrels or Sides, to "the Diſturbance or Hindrance of common Right." **Maintenance** is twofold, *Ruralis*, or in the Country; as where one aſſiſts another in his Pretenſions to Lands, by taking or holding the Poſſeſſion of them for him by Force or Subtilty; or, where one ſtirs up Quarrels or Suits in the Country, in Matters which no Way concern him; this Offence is puniſhable at the King's Suit by Fine and Impriſonment. *Curialis*, that is, Maintenance in a Court of Juſtice, where one officiouſly intermeddles in a Suit depending, which no Ways belongs to him, by aſſiſting with Money, or otherwiſe, in the Proſecution or Defence of ſuch Suit: This Kind of Maintenance is, where one maintains another without any Contract to have Part of the Thing in Suit. The Acts of Maintenance are various; as, where one aſſiſts another with Money in Whole, or in Part, to carry on his Cauſe; an Endeavour to perſwade a Man to be of Counſel *gratis*, giving Evidence officiouſly without being called upon, being of Counſel himſelf with the Party *gratis*. It hath been ſaid, thoſe ſhall come under the ſame Notion, who, being of great Power and

(*f*) Ubi ſup. 167. (*g*) Vid. *Hickes*'s Theſaur. I. pars 2. Pref.
(*h*) *Hales*'s H. L. 172. v. *Kennett* I. 480 *b*. (*i*) *Camd.* 518 (3). * *Spelm.* Relig. 99.
(*k*) V. *Fort.* cap. 25, 32. Pref. 8. *Co.* fo. 5. (*l*) 34 E. 3. c. 1.
(*m*) *Hawk. P. C.* I. 243.

Intereſt, ſhall give out publickly, that they will ſpend a Sum of Money to labour the Jury, whether in Truth he ſpend one Penny or not: Even a (*n*) ſtanding by while the Cauſe is trying. Both Practices give a Biaſs and ſerve to intimidate Juries from doing their Duty. A ſupporting another after Judgment may be an Act of Maintenance, becauſe the Party grieved may be diſcouraged thereby from bringing a Writ of *Error* or *Attaint*. There are ſome Caſes, and in ſome Reſpects, wherein Acts which look this Way may be juſtify'd; honeſt Men will diſtinguiſh them: It is a Piece of Caſuiſtry, how far a Man may go without being criminal, therefore I ſhall not be particular. All *Maintenance* in a Court of Juſtice is ſtrictly prohibited at Common Law, as having a manifeſt Tendency to Oppreſſion, by encouraging and aſſiſting Perſons to perſiſt in Suits, which perhaps they would not venture to go on with upon their own Bottoms; therefore it is ſaid, that all Offenders are liable to an *Action of Maintenance* at the Suit of the Party grieved, wherein they ſhall render Damages, and they are alſo indictable as Offenders againſt Public Juſtice, and to ſuffer Fine and Impriſonment agreeably to the Circumſtances of the Offence. Alſo it ſeemeth, that a Court of Record may commit a Man for an Act of Maintenance done in the Face of the Court. There are ſeveral *Statutes* to reſtrain Offences of this Kind (*o*). Alſo all Perſons are prohibited to give or receive any *Liveries* or *Badges* for *Maintenance*, under ſevere Penalties (*p*).

V. poſt p. 27. N. i. c. 8.

A third Cauſe, which renders the Proceedings by a Jury precarious and leſs certain, is **Champerty**, "which is but another Spe- "cies of Maintenance; and this is where one maintains one Side, "to have Part of the Thing in Suit." I have already ſhewn what ſhall amount to an Act of Maintenance, and how far all *Maintenance* in general, and conſequently *Champerty*, is puniſhable by the Common Law; how far this Offence is reſtrained by *Statute*, ſhall refer the Reader to the Statutes themſelves (*q*).

Champerty.

A fourth and laſt Cauſe, which depreciates this invaluable Method of Trial by XII Men, is **Embracery**, "A ſecond Species of "Maintenance". There come under this Title any Attempt whatſoever to corrupt, influence, or inſtruct a Jury by Money, Promiſes, Letters, Treats or Perſwaſions; any Way, indeed, other than and except the Strength of the Evidence, and the Arguments of Counſel in open Court, at the Trial of the Cauſe, whether a *Verdict* be had or not, whether the *Verdict* given be true or falſe: The Law ſo far abhors any the leaſt Tendency to Corruption in this Kind, that even Labouring a Juror to appear, or not to appear, is conſtrued an Act of *Embracery*. Generally, giving Money to a Juror

Embracery.

(*n*) It is a Part of the Judges Oath, that in Caſe any Perſons, of whatever Eſtate they be, come before the Judges in their Seſſions, with *Force* and *Arms*, or otherwiſe, againſt the Peace, or againſt the Form of the *Statute* thereof made, for to diſturb the Execution of the *Common Law*, or for to menace the People, that they may not do the Law; that the Judges ſhall arreſt their Bodies, and put them in *Priſon*; and in Caſe they be ſuch as they may not arreſt, that they ſhall certify the King of their Names, and of their *Miſdoing* haſtily; to that End, that he may thereof ordain Remedy: See the Caſe of *Pen* and *Mead*, in a Pamphlet intitled, The People's Liberties aſſerted 4*to Lond.* 1682. p. 51. *Kennett* Hiſt. *England* III. 377 *a. b.*

Judges Oath.

State Trials, II. 606.

(*o*) 1 E. 3. c. 14.—20 E. 3. c. 4.—1 R. 2. c. 4.

(*p*) V. 1 R. 2. c. 7.—7 Hen. 4. c. 14.—13 H. 4. c. 3.—8 H. 6. c. 4.—8 E. 4. c. 2. *Weſtminſter* 1. c. 28.—32 H. 8. c. 9.—*Atkins* of the diſpenſing Power, p. 51. *Poulton* de pace Regis & Regni, chap. Maintenance, fo. 55.

(*q*) *Weſtminſter* 1. c. 25.—*Weſtminſter* 2. c. 49.—28 E. 1. c. 11.—*Hawk. P. C.* B. I. c. 84.

after

after the *Verdict*, without any precedent Contract in Relation to it, unleſs by Conſent of the Parties, and Leave of the Court firſt had, is an Offence ſavouring of the Nature of *Embracery*; not but that it hath been found neceſſary to permit the Parties a reaſonable Amends for their Expences in Travelling and Attendance; becauſe it would be often difficult otherwiſe to prevail with Perſons to ſerve on a Jury, at their own Charge. It hath been adjudged, that the bare giving Money to another to be diſtributed among Jurors, is an Offence of the Nature of *Embracery*, whether it be diſtributed or not: It is as criminal in a Juror, as in any other Perſon, to endeavour to prevail with his Companions to give a *Verdict* for one Side by any Practices whatſoever, except only by Arguments from the Evidence which was produced, and Exhortations from the general Obligations of Conſcience to give a true Verdict: All fraudulent Contrivances whatſoever to ſecure a Verdict, are high Offences of this Nature; as, where Perſons by indirect Means procure themſelves or others to be ſworn on a *Tales* in order to ſerve one Side. Acts of this Kind altogether unlawful are, where the Party himſelf, his Counſel, Attorney, or any Perſon whatſoever, uſe any indirect Practices of influencing a Jury, either by giving or promiſing them Money, by menacing or inſtructing them in the Cauſe beforehand. In what Circumſtance Acts of this Nature may be lawful, muſt, I think, be left to every conſcientious honeſt Man to determine for himſelf. Offences of this Kind are reſtrained by the *Common Law*; no doubt, they ſubject the Offender either to an *Indictment* or *Action*. It ſeemeth, if an Act of *Embracery* were not known before the Trial of a Cauſe, ſo that the Party could poſſibly have no Opportunity to prevent the ill Effects of it, by challenging the Juror who was practiſed upon, it will be a good Ground to move the Court to ſet aſide the *Verdict*. Offences of this Kind are reſtrained by ſeveral *Statutes* (*r*).

Buying and ſelling falſe Titles.

The Offence of buying or ſelling a pretended Title has alſo a Tendency to the Corruption of Juries; as the Intention is, that the Buyer may carry on the Suit, which the Seller doth not think it worth his While to do, and, on that Conſideration, ſells his Pretenſions at an Under-Rate: This is an high Offence at *Common Law*, and reſtrained by *Statute* (*s*).

Upon the whole, where any one is a common Mover of Strifes and Suits, and, in order thereto, maintains, upholds and bears out People with his Intereſt and Purſe, the Progreſſion is eaſy and natural to contract for and acquire an Intereſt in the Thing in Diſpute, and then a Reſolution is taken to leave no Stone unturned to embrace and influence a Jury to crown the Cauſe with Succeſs. And it is notorious, that ſuch (*t*) Perſons attend Courts of Juſtice, as

(*r*) 5 E. 3. c. 10.— 34 E. 3. c. 8.— 38 E. 3. 12. (*s*) 1 R. 2. c. 9.— 32 H. 8. c. 9.

(*t*) Videre eſt violenta & rapaciſſima genera hominum, per fora omnia volitantium & ſubſidentium divites domus, ut Spartanos canes aut Cretas, veſtigia ſagacius colligendo, ad ipſa cubilia pervenire cauſarum: in his primus eſt cœtus eorum, qui ſeminando diverſa jurgia per vadimonia mille jactantur, viduarum poſtes & orborum limina deterentes, & aut inter diſcordantes amicos, aut propinquantes vel affines, ſi ſimultatum levia ſenſerint receptacula, odia ſtruentes infeſta: in quibus ætatis progreſſu non ut aliorum vitia intepeſcunt, ſed magis magiſque roborantur inter rapinas inſatiabiles inopes, ad capiendum verſutis orationibus judicum fidem, quorum nomen ex juſtitiâ natum eſt, ſicam ingenii deſtringentes. Horum obſtinatione libertatem temeritas, conſtantiam audacia præceps, eloquentiam inanis quædam imitatur fluentia loquendi: quarum artium ſcævitate, ut Tullius adſeverat, nefas eſt religionem decipi judicantis. Ait enim, " Cùmque nihil tàm incorruptum

as have no Pretence to Conſcience, who will do any Thing for Money, and are known perſonally to appear, in order to be returned as *Tales*; and there are never wanting Perſons of Addreſs and Chicane, whoſe particular Talent it is to inſinuate themſelves in a Crowd, in order to manage a Jury. This Subject is very little inſiſted upon, very ſeldom comes under the Conſideration of a Court of Juſtice, not ſo much as in the Deſcription; therefore I promiſe myſelf, that I am not unſeaſonable in putting it in the preſent Light.

Perhaps a main and original Cauſe of a Defect in the Way of Trial by a Jury of XII Men, may be an indirect Practice in the *Sheriffs* Offices thoughout the Kingdom, in the Appointment and Striking of Juries: Neither has the *Stat.* 7 *W.* 3. *c.* 32. been ſtrictly obſerved and purſued: Freeholders Books are for the moſt part defective, and this Fault has lain at the Door of the *Juſtices* of the *Peace*. Sheriffs, their Management.

A ſtrict and ſevere Penalty ought to be inflicted where a ſufficient Number of the original Panel do not appear; " and it is a " great Pity but that the Laws, which indulge a *Tales de Circum-* " *ſtantibus*, were taken away. By ſome ſuch Methods, there would " be no Occaſion to change the *Venue*, Trials in other Counties

" eſſe debeat in republicâ quàm ſuffragium, quàm ſententia; non intelligo cur qui ea pecuniâ cor- " ruperit, pœnâ dignus ſit: qui eloquentiâ, laudem etiam ferat. Mihi quidem hoc plus mali facere " videtur, qui oratione, quàm qui pretio judicem corrumpit: quòd pecuniâ corrumpere prudentem nemo poteſt: dicendo poteſt." Secundum eſt genus eorum, qui juris profeſſi ſcientiam, quam repugnantium ſibi legum abolevere diſcidia, velut vinculis ori impoſitis reticentes, jugi ſilentio umbrarum ſunt ſimiles propriarum. Hi velut fata natalicia præmonſtrantes, aut Sibyllæ oraculorum interpretes, vultus gravitate ad habitum compoſita triſtiorem, ipſum quoque venditant quod oſcitantur. Hi ut altiùs videantur jura callere, Trebatium loquuntur, & Caſcellium, & Alfenum, & Aruncorum Sicanorúmque jamdiu leges ignotas, cum Evandri matre abhinc ſæculis obrutas multis. Et ſi voluntate matrem tuam finxeris occidiſſe, multas tibi ſuffragari abſolutionem lectiones reconditas pollicentur, ſi te ſenſerint eſſe nummatum. Tertius eorum eſt ordo, qui ut in profeſſione turbulenta clareſcant, ad expugnandam veritatem ora mercenaria procudentes, per proſtitutas frontes vilèſque latratus quò velint aditus ſibi patefaciunt crebros: qui inter ſollicitudines judicum per multa diſtentas inreſolubili nexu vincientes negotia, laborant ut omnis quies litibus implicetur, & nodoſis quæſtionibus de induſtriâ judicia circumſcribunt: quæ cùm rectè procedunt, delubra ſunt æquitatis: cùm depravantur, foveæ fallaces & cæcæ: in quas ſi captus ceciderit quiſquam, non niſi per multa exſiliet luſtra, aduſque ipſas medullas exſuctus. Quartum atque poſtremum eſt genus impudens, pervicax, & indoctum, eorum qui cùm immaturè è literariis eruperint ludis, per angulos civitatum diſcurrunt, mimiambos non cauſarum remediis congrua commentantes, fores divitum deterendo, cœnarum ciborúmque aucupantes delicias exquiſitas. Qui cum ſemel umbraticis lucris, & inhiandæ undique pecuniæ ſeſe dediderint, litigare fruſtra quoſlibet innocentes hortantur: & ad defendendam cauſam admiſſi, quod rarò contingit, ſuſcepti nomen & vim negotii ſub ore diſceptatoris inter ipſos conflictuum articulos inſtruuntur, circumlocutionibus indigeſtis ita ſcatentes, ut conluvionis tæterrimæ audire exiſtimes ululabili clamore Therſiten. ——— Nec fas ullum præ oculis habent: ſed tamquam avaritia venumdati & uſucapti nihil præter interminatam petendi licentiam norunt. Et ſi quem ſemel intra retia ceperint, caſſibus mille impedicant, per morborum ſimulationem viciſſim conſultò ceſſantes: útque pervulgati juris proferatur lectio vana, ſeptem vendibiles introitus præparant, dilationum examina longiſſima contexentes. Et cùm nudatis litigatoribus dies ceſſerint, & menſes, & anni, tandem obtrita vetuſtate controverſiâ intromiſsâ, ipſa capita ſplendoris ingreſſa alia ſecum advocatorum ſimulacra inducunt. Cúmque intra cancellorum venerint ſæpta, & agi cœperint alicujus fortuna vel ſalus, atque laborari debeat ut ab inſonte gladius, vel calamitoſa detrimenta pellantur, corrugatis hincinde frontibus, brachiiſque hiſtrionico geſtu formatis, ut concionaria Gracchi fiſtula poſt occipitium deſit, conſiſtitur altrinſecus diu, tandémque ex præmeditato conludio, per eum qui eſt in verba fidentior, ſuave quoddam principium dicendi exeritur, Cluentianæ vel pro Cteſiphonte orationum æmula ornamenta promittens: & in eam concluſionem cunctis finem cupientibus deſinit, ut nondum ſe patroni poſt ſpeciem litis triennium editam cauſentur inſtructos: ſpatióque prorogati temporis impetrato, quaſi cum Antæo vetere colluctati, perſeveranter flagitant pulveris periculoſi mercedes.(1) —— *Leguleius cautus, acutus præco actionum, cantor formularum, auceps ſyllabarum* (2). —— *Aucupia verborum, literarum tendiculæ* (3.)

(1) *Am. Marcellin.* L. 30. c. 4. (2) *Cic.* de Oratore, L. 1. c. 55.
(3) *Cic.* pro *Cecinnâ.* V. *Tac.* An. L. 11. c. 5, 7.—L. 13. c. 42. *Pitiſc.* ad v. *Jus Clientelare.*

" would be wholly unneceſſary; and Trials at Bar, before the " Judges in *Weſtminſter-Hall*, would not be ſo common."

Other Defects in the Law.

" There are other Defects in the Laws, as they are at preſent " practiſed; ſuch are the Chicanery, Dilatorineſs and exceſſive Charge " which attend our Courts of Law; particularly, where the Pro- " ceedings are carried on in *Chancery*: And one great Grievance " of this Court is, that when the Parties have gone through with " Bill, Anſwer and Commiſſion, and they are at laſt come to an " Hearing; the whole Proceedings are laid aſide, and a Fact is " ſtarted, upon which an Iſſue at Law is directed to be tried by a " Jury, notwithſtanding that the whole Hiſtory of the Cauſe *pro* " and *con.* is before the Court *in ſcriptis.*" The Titles of Purchaſes are precarious for want of a (*u*) *Publick Regiſtry*, which would prevent private Sales, and bring to light unknown Settlements and Mortgages. The Laws too in their Execution are very deficient, and there are many Practiſers, who are remarkable for nothing ſo much, as for their evaſive Practice and helping out at a dead Lift. As great a Grievance as any is, that the Fees of all the Courts of Juſtice, from the inferior Juriſdictions upwards, are arbitrary, and will continue ſo to be till a more extenſive Law be provided to reſtrain the Sale of all Offices, which concern the Adminiſtration of Juſtice, or the Execution of the Laws; whether ſuch Places be enjoy'd by Grant or Leaſe from the Crown, a Corporation, or common Perſon, they ought to be bought in, and reſolved into the ſupreme legiſlative Power, by which means the Perſons, in Poſſeſſion of ſuch Offices, would be more dependant, and more abſolutely determined to do Juſtice to the Subject, and there could be no ſiniſter Views for Oppreſſion, where the Penalties and Forfeitures would be under a more proper Direction, and not for the Benefit of any Miniſterial Officer. If it be asked how this can be effected, the Anſwer is eaſy, *viz.* in the Way of Parliament, they being very good at contriving ſuch Matters, and making them practicable, as well as at performing all other Matters which concern the Intereſt and Greatneſs of the Kingdom (*x*). Unleſs this be done, the late Proſecution of a noble Earl will be one Inſtance, amongſt a few, and make his Caſe the more particular and ſevere, neither can it have the Effect propoſed. V. *Eſſay for Regulation of the Law*, 8vo 1727. §. 10. 21 (*y*).

(*u*) Mr. *Aſgill*'s Eſſay on a Regiſtry for Titles of Lands, 12° *Lond.* 1701 — *State Tracts* II. p. 693. — *Whitlock* Mem. 424. *b.*

(*x*) ——ære gravi mercati publicas poteſtates, ut creditores moleſti opes cujuſquemodi fortunæ rimantes, alienis gremiis excutiunt prædas. Ad ultimum id habet cauſidicina cum cæteris metuendum & grave, quòd hoc ingenitum eſt pæne litigantibus cunctis, ut cum jurgia mille caſibus cadant, accidentia ſecus in poteſtate eſſe exiſtiment patronorum: & omnem certaminum exitum iiſdem ſoleant adſignare, & non vitiis rerum, aut iniquitati aliquoties diſceptantium, ſed ſolis defenſantibus iraſcantur (1)] " Hæ magiſtratuum rapinæ non aliter prohiberi poſſunt, quàm provi- " dendo ne magiſtratus venales ſint. Quid enim aliud ab eo, qui magiſtratum pretio emit, expectes, " quàm ut vendat quod (2) emit? *Quæ emeris vendere, gentium jus eſt* (3). Idcircò Alexander " Severus honores juris gladii numquam vendi paſſus eſt, dicens, *Neceſſe eſt ut qui emit, & ven-* " *dat. Erubeſco punire hominem, qui emit & vendidit.* Adde Novellam 8. Juſtiniani.

(*y*) Memoirs Literature, *May* 1727. p. 389. V. *Plato Red.* p. 131. *Atkins* D. P. p. 25. Lord *Bacon*'s Adv. *Watt*'s Interp. 446, 7. [5 *Ed.* VI.] V. Lord *Maccl.* Trial, p. 24. 2 *R.* II. c. 2.

(1) *Am. Marcellin.* L. 30. c. 4. *Cic.* L. 2. in *Verrem* 55. *Salvian.* in lib. 4. de Gubernat. Dei. *Zoſim.* L. 4. p. 755. (2) *Syneſ.* in Orat. de Regno, ſub finem. (3) *Senec.* in lib. 1. de Benefic.

Law reform'd.

There have, in the Courſe of our Hiſtories, been ſeveral Regulations made, and Proceedings had with reſpect to the Amendment of the Laws, and the due Adminiſtration of Juſtice within this Kingdom. Occaſions have happen'd which have required the immediate Attention and Care of our Kings. The Behaviour of King (*z*) *Alfred* is well known; King *Edgar* in his Progreſſes uſed to take Account of his Great Men and Judges; *Edw.* I. whom the Lord Chief Juſtice (*a*) *Hale* calls our *Engliſh Juſtinian*, made it his firſt Care to reform the Abuſes, which had been indroduced in the Adminiſtration of Juſtice. Our (*b*) Kings have often ſat in the Court of King's Bench. The Proceedings in the ſucceſſive Reigns of *Ed.* III. and (*c*) *Rich.* II. are very memorable. *Ed.* IV. is ſaid to have ſat in Perſon. Some Regulations and Attempts of a later Date I ſhall obſerve, as near as I can, in order of Time, as they happened.

Sir Henry Spelman.

I find in the Life of Sir *Henry Spelman*, that he was appointed one of the Commiſſioners *to inquire into the Oppreſſion of exacted Fees*, in all the Courts and Offices of *England*, as well Eccleſiaſtical as Civil; which a late (*d*) Author calls *a noble Examination and full of Juſtice*. To this Buſineſs he gave his conſtant Attendance for many Years, with great Integrity and Application, and the Government was ſo ſenſible of his good Services, that the Council procured his Majeſty's Writ of Privy Seal for 300*l.* to be preſented to him, *not as a full Recompence* (for ſo they declared,) but only as an *occaſional Remembrance*, till they ſhould have an Opportunity of doing ſomething for him, that might be a more ſuitable Conſideration for his Diligence in that and other publick Affairs. V. *Whitlock*'s Journal, *&c.* 270.

Sir Francis Bacon.

Sir (*e*) *Francis Bacon* made a Propoſal to his Majeſty touching the Compiling and Amendment of the Laws of *England*; and an Offer was made by the ſame Great Man of a *Digeſt* to be made of the ſaid Laws. The Lord Chief Juſtice *Hale*, in his excellent Preface to *Roll*'s Abridgment, ſays, " Conſidering to how great a Bulk the Volumes and Books of the Common Law have in Proceſs of Time ariſen; how many printed Reſolutions of the ſame Caſes or Points; how many diſagreeing Reports there are touching the ſame Matter; how many ſeeming contradictory Opinions that would be explained or ſettled; how many Titles are diſuſed: It were to be wiſhed that ſome complete *Corpus Juris communis* were extracted out of the many Books of our *Engliſh* Laws for the publibk Uſe, and for the contracting of the Laws into a narrower Compaſs and Method at leaſt for ordinary Study. V. *Burnet* Ref. II. p. 47, 96. K. *E.* 6. Journ. p. 19. Rem. p. 73.

The *Independants* in their Petition to the Parliament, *September* 11, 1648. ſeem to expreſs themſelves very rationally, when in the 9th Article they inſiſt upon it, " That the Proceedings in Law be " abbreviated, mitigated and made certain, the Charge thereof in " all Particulars (*f*).

c. 2. 5 & 6 *Ed.* VI. c. XVI. Lord *Maccl.* &c. 144 *a.* 256 & ſeq. ib. Mr. Serjeant *Pengelly*'s Speech 255 & ſeq. V. *Percival Brunskell*'s Caſe, temp. E. 2. about buying and ſelling Offices, Fees of the Courts, *&c.*

(*z*) *Fort.* de Laud. c. 51. N. n. (*a*) Pref. *Roll*'s Abr. (*b*) *Fort.* de Laud. c. 8. N. 3. (*c*) *Tyrell* III. p. 919, 932. (*d*) *Hacket*'s Life Bp. *Williams*, P. II. p. 93. (*e*) Life before his Works lately publiſhed, p. 180. (*f*) *Rapin* XII. 528, 9.

A. D.

A. D. 1651. The Parliament named a Committee to conſider what Inconveniencies there are in the Law, how the Miſchiefs which grow from Delays, the Chargeableneſs and Irregularities in the Proceedings in the Law may be prevented. This Committee met ſeveral Times, and deſired the Judges in the ſeveral Courts to return to them a Liſt of the Officers in their Courts, and what Fees they receive, and what Work they do for them. " A Project of ex- " cellent Uſe, and fit for the Wiſdom of the Nation to bring to " Perfection (*g*)."

A Committee of Law.

A. D. 1652. The Committee of Law preſented to the Parliament Draughts of *Acts*;

For taking away Fines upon Bills, Declarations and original Writs.

Againſt cuſtomary Oaths of Fealty and Homage to Lords of Manors.

For taking away Common Recoveries, and the unneceſſary Charge of Fines, and to paſs and charge Lands intailed as Lands in Fee Simple.

For aſcertaining arbitrary Fines upon Deſcent, and Alienation of Copyholds of Inheritance.

For the more ſpeedy Recovery of Rents.

Touching Pleaders and their Fees.

For the more ſpeedy Regulating and eaſy Diſcovery of Debts and Damages not exceeding 4 l. *and under.*

The very Titles of theſe Acts ſhew how worthy they were of the Wiſdom of the Nation; and it is aſtoniſhing that the ſame Art, which obſtructed the Reform of the Practice of the Law almoſt fourſcore Years ago, ſhould have ſtill ſucceeded in the like Obſtruction from that Time to this. It does by no Means do Honour to the Profeſſion, which is charged with it. " The Reformation of the " Law went on but ſlowly in Parliament, ſays *Ludlow*, it being " the Intereſt of Lawyers to preſerve the Lives, Liberties and E- " ſtates of the whole Nation in their Hands: So that upon the De- " bate of regiſtring Deeds in each County, *for want of which, with- " in a certain Time fixed after the Sale, ſuch Sales ſhould be void*; " *and being ſo regiſter'd, that Land ſhould not be ſubject to any In- " cumbrance*;" this Word *Incumbrance* was ſo managed by the Lawyers, that it took up three Months Time before it could be aſcertained by the Committee of Parliament (*h*).

Under the Commonwealth of *England*, before the Protectorate, an Eye and Regard was had to the Regulation of the Law: In the Parliament, of which Mr *Rous* was Speaker, they made Committees to conſider Matters touching the Law, and touching Priſoners and Priſons (*i*).

On the 5th *June* 1659. the Parliament had in Debate the Regulation of the Law, and ordered a Bill *to reform Abuſes in Clerks, Attornies, Solicitors and Lawyers.* They alſo referred *it to the Council to take Care that the People be not wronged by Bailiffs and Juries:* 'Twas worthy the Wiſdom of the Nation to redreſs ſuch enormous Grievances. It is worth obſerving who have been the Occaſion of the Stop that has been put to ſuch generous Deſigns,

(*g*) *Oldmixon*, p. 402. (*h*) Ib. [409, 10.] (*i*) *Oldmixon*, p. [415.]

and they are found to be Perſons, who make their Market of ſuch Wrongs and Abuſes. It is by no Means worthy the Wiſdom of the Nation to be impoſed upon by them (*k*).

The Lawyers were alarm'd at the Bill for regulating their Practice, which, as it is now, is ſtill more a Grievance than it was then. "The two Parties, *viz. The Lawyers and the Clergy of that Time* "*and Stamp, being equally concerned to perpetuate the Abuſes prac-* "*tiſed amongſt them, became equally* ſenſible of their common Dan- "ger, and in order to prevent it, *Whitlock* and *St. John* for the Law- "yers, Dr. *Owen* and Mr. *Nye* for the Clergy, had at this Time "frequent Meetings at the *Savoy*, and entered into a private Trea- "ty with the principal Perſons of the *Wallingford-Houſe* Party, "offering to raiſe 100,000 Pounds for the Uſe of the Army, upon "Aſſurance of being protected by them in the full Enjoyment of "their reſpective Advantages and Profits; whereby we were left de- "ſtitute of Hope to ſee any other Reformation of the Clergy, than "what they themſelves would conſent to, nor any other Regula- "tion of the Law, than what the Chief Juſtice and the Com- "miſſioner of the Seal would permit (*l*)."

Previous to theſe Proceedings (*viz. A. D.* 1650.) which are above particularly ſet down and what occaſioned great Debates in the Houſe, was the Project of altering the Forms of the Law, and making all Writs and Proceedings to run only in the *Engliſh* Tongue. This was the Subject of ſeveral Petitions from the Soldiers and the Country Farmers, who indeed had reaſon to think themſelves impoſed upon by Languages which they did not underſtand. Hence it was at laſt enacted, *Nov.* 22. that all Report Books of the Reſolutions of Judges, and other Books of the Law of *England*, ſhall be tranſlated into the *Engliſh* Tongue, and all Writs, Proceſs and Returns thereof, Pleadings, Rules, Orders, Indictments, Inquiſitions, Certificates, Patents, and all Acts, Deeds and Proceedings whatſoever ſhall be only in the *Engliſh Tongue*, in the ordinary uſual Hand, and not in the Court-Hand (*m*).

About the Year 1666. the Lord Chief Juſtice *Kelyng* was queſtioned in Parliament for over-awing and putting a Reſtraint upon Juries; and the Houſe came to ſeveral Reſolutions upon his Caſe, and ordered him to be proſecuted; but by reaſon of the *Houſe*'s being *prorogued*, and he himſelf not long after *Dying* in *Diſcontent*, we do not find there were any further *Proceedings* made therein (*n*). L. C. J. Kelyng's Caſe.

In the Caſe of *Pen* and *Mead*, at the Seſſions for *London*, *Sept.* 1670. the Jury was treated more like a Pack of Felons than a Jury of honeſt Men. No Jury for many Ages received ſo many Inſtances of Diſpleaſure and Affront, becauſe they preferr'd not the Humour of the Court before the Quiet of their own Conſciences, even to be eſteemed as perjured, though they had really been ſo, had they not done what they did. After two Days and two Nights Reſtraint for a Verdict, they were in the End fined and impriſon- Caſe of *Pen* and *Mead*.

(*k*) *Oldmixon*, p. 437. *b*. (*l*) Ib. 447. *b*. 484. *a*. V. *Whitlock*'s Mem. of *Eng*. Affairs, from *C*. 1. to the Reſtoration, p. 439. *b*. 459. *a*. 460. *b*. 461. *b*. 194. *b*. 569. *b*. 414. *b*. & ſeq. 535. *b*. 543. *b*. 549. *a*. (*m*) *Kennett*, III. 197. (*n*) Triumphs of Juſtice, Fo. *Lond*. 1681. p. 29, 36.

ed for giving it. See this Caſe reported under the Name of *Buſhell's* Caſe in *Vaughan's* Reports (*o*).

1680. *Nov.* 13. Several Perſons were examined at the Bar of the Houſe of Commons about the Diſmiſſing of a Grand Jury in *Middleſex*, and after a Debate, the Houſe came to theſe Votes. I. That the Diſcharging of a Grand Jury by any Judge, before the End of a Term, Aſſiſes or Seſſions, while Matters are under their Conſideration, and not preſented, is arbitrary, illegal, deſtructive to Public Juſtice, a manifeſt Violation of his Oath, and is a means to ſubvert the fundamental Laws of this Kingdom. II. That a Committee be appointed to examine the Proceedings of the Judges in *Weſtminſter-Hall*, and report the ſame with their Opinion therein, to this Houſe (*p*).

Sir William Scroggs impeached.

About this Time, *viz. Jan.* 5. Articles of Impeachment were brought in againſt Sir *William Scroggs*, Chief Juſtice of the *King's Bench*; and it being the Senſe of the Houſe, that the late Order made in the *King's Bench*, their Warrants for ſeiſing of Books, and their diſmiſſing of Grand Juries, doth tend to the Subverſion of the Government, and hath been, and ever ought to be, in Judges, adjudged Treaſon; It was Reſolved, *That the ſaid Sir* William Scroggs *be impeached upon the ſaid Articles; and that the ſaid Articles be ingroſſed, and carried up to the Lords by my Lord* Cavendiſh (*q*).

In the Act, *Declaring the Rights and Liberties of the Subject, &c.* amongſt other Things complained of, are wrong Proſecutions, Juries made up of partial, corrupt and unqualified Perſons, exceſſive Bail, Fines and Puniſhments, and Grants of Fines (*r*).

The Prince being convinced that an Acquaintance with the Laws was a neceſſary Qualification, as the Guide and Rule of his Government, the Chancellor, in the eighth Chapter, takes off a main Objection, by ſaying, that a general Knowledge was ſufficient in the Caſe; that there was no Occaſion for ſevere Study, or great Expence of Time, and that knotty Points were to be left to his Judges and Counſel learned in the Law. What Helps and Materials were then in Uſe and Reputation, at this Time of Day, we can't ſo preciſely know; but later, and the preſent Times, have afforded many uſeful and valuable Books for the Purpoſe.

Law Books. Hiſtory.

Glanvil, *Bracton*, *Fleta*, *Hengham*, the *Mirror*, *Britton*, *&c.* were frequent in MS. all of them. They are Books profitable to read, though what they give for Law, is now antiquated, and they are ſo far of Authority, as they ſhew what antiently was the Common Law. Bp. *Nicholſon* (*s*) gives *Bracton* the Teſtimony of a truly *Venerable Code* of our ancient **Common Law**: He treats of the ſeveral legal Ways of procuring of Properties, and then proceeds to thoſe of the juſt maintaining, or recovering of them. The Method is natural, and very conformable to that of the Great Emperor *Juſtinian*, whoſe Matter is alſo very frequently adhered to, and

Bracton.

(*o*) See the PS. to the People's Liberties aſſerted in the Trial of *Pen* and *Mead*. The *Engliſhman's* Right, pr. for *R. Janeway*, 1680. The Grand Juryman's Oath, *&c.* explained. Sold by *Langley Curtis*, *Ludgate-Hill*. Triumphs of Juſtice, p. 30. (*p*) *Kennett*, III. 377. (*q*) *Kennet*, III. 368, 379. *Burnet's* Hiſt. 448, 468. *Eachard*, III. 562, 573, 694, 604, 628. *Wood's Ath.* II. 748. *Rapin*, XIV. 279. (*r*) *Stat.* 1 *W. & M. Seſſ.* 2. c. 2. *Keb.* p. 1554. *Kennett*, III. 548. See the Caſe of *Uſk* Under-Sheriff of *Middleſex*, *&c.* 11 *R.* 2. *Tyrrell*, III. 932. (*s*) III. 139.

his

his Laws quoted (ſometimes, *in ipſiſſimis verbis*) as familiarly, as if they were Part of the known Common Law of this Kingdom (*t*).

Fleta. *Fleta* (*u*) is a methodical and learned Treatiſe: The firſt Part is taken up with the Pleas of the Crown; in the next Place the learned Author gives a moſt full and curious Account of all the Officers of the King's Houſhold, with many other Particulars, which exceedingly illuſtrate the Story of thoſe Times; and in the remaining Part of the Book he ſhews the then Practice of our Courts of Judicature, the Forms of Writs, Explication of Law-Terms, *&c.* He ſometimes tranſcribes the very Words of *Bracton*.

Littleton, &c. Other Books are, the Old Tenures, *Littleton*'s Tenures, the Lord *Coke*'s Comment upon him, and Mr. Serjeant *Hawkins*'s Abridgment; *Doctor* and *Student* (*x*) written by *Chr. Saintgerman*, a Barriſter of the Inner Temple; *J. Perkins*'s French Treatiſe.

Lord *Bacon*. The Lord *Bacon* wrote ſeveral Treatiſes upon the Law, wherein, though ſome great Maſters of the Law did out-go him in Bulk, and Particularities of Caſes; yet, in the Science of the Grounds and Myſteries of the Law, he was exceeded by none. Amongſt others, he writ Elements of the *Common Laws* of *England*, containing, 1. A Collection of ſome principal Rules and Maxims of the *Common Law*, with their Latitude and Extent. 2. The Uſe of the Common Law for the Preſervation of our Perſons, Goods and good Names, according to the Laws and Cuſtoms of this Land, (*y*) and other ſmall Treatiſes.

Dr. *Zouch*. About this Time Dr. *Zouch** began to ſignalize himſelf, *A. D.* 1619. he was admitted a Doctor of the Civil Law at *Oxford*. For his Knowledge and Practice therein he was the Chief Perſon of his Time. He is called by Mr. *Wood* (*z*) the *Living Pandect* of the Law. His Works are much eſteemed, and The (*a*) *Elementa Juris-prudentiæ* is what I would recommend in the preſent Caſe. Another remarkable Book (*b*) written by him is, *Solutio Quæſtionis de Legati delinquentis Judice competenti* (*c*), written on the Caſe of *Don* (†) *Pantaleon Sa*, (*d*) Brother to the *Portugueſe* Ambaſſador, who had killed a Gentleman of *Lincoln's Inn*: The Difficulty was, whether he might be tried for his Life in the *Engliſh* Courts of Juſtice, and how? *Zouch* cleared their Doubts, and *Sa* was tried by the Civil Law, and executed; Dr. *Zouch* himſelf being one of the Commiſſioners of Oyer and Terminer upon the Trial. He alſo writ *Quæſtiones Juris Civilis*. Edit. 3. 12° *Lond.* 1682. p. 511.

Dr. Cowel. The next I ſhall mention, is Dr. *Cowell*, who writ *Inſtitutions* according to the Order of thoſe of the Empire; this Book is written in an excellent Method and elegant *Latin*, and very well ſerves to deliver us from the Reproach of Foreigners (*e*), as if the **Common Law** of *England* were not to be treated of in any but a barbarous Language. The Doctor was well skilled both in the

(*t*) *Spelm.* Relig. 99. (*u*) *Kennett*, III. 142. (*x*) Ib. 173. (*y*) Coll. to Lord *Bacon*'s Life, p. 5, 66, 180. * *Each.* III. 41. *Wood*'s Inſt. Imp. L. Pref. XV. (*z*) *Athenæ*, II. 256. *Wood*'s Inſt. Com. L. 341. *Inſt. Imp. L.* 71, 259. (*a*) 8° *Oxon.* 1629, 1636. L. B. 1652. 16° *Amſt.* 1681. 12°. V. *Nicholſon*, III. 87, 126, 193. (*b*) *Oxon.* 1657. 8°. (*c*) *Wood*'s *Ath.* ubi ſup. † *Whitlock*'s Mem. *Eng.* Affairs 550. *a. b.* 575. *b.* 577. *b.* (*d*) *Clar.* III. 384. *Each.* II. 762. *Kennett*, III. 209. *Rapin*, XIII. 101. *Oldmixon* [421, 423, 4.] (*e*) *Atk.* of Parliaments 18, 19. Sir *H. Spelm.* Life, Fo. 1 *b.* *Philips*'s Studii Legalis Ratio 107.

Civil

Civil Law his Profeſſion, as alſo in the *Common Law*: He was as well able to practiſe in *Weſtminſter Hall* as *Doctors Commons*. Of this he hath left two Chief Monuments to Poſterity, this Book and his *Interpreter*. He had the Misfortune to fall under the Diſpleaſure of the Government, and his Book the *Interpreter* was called in and condemned; for Particulars, I ſhall beg Leave to refer to the Books in the Notes (*f*). The *Inſtitutions* deſerve a new Edition. The References in Law Caſes (where an Editor can never be too exact) being very precarious and uncertain (*g*).

Dr. Duck. A third I ſhall mention, and Contemporary with the two former, is Dr. *Arthur Duck*, a Native of the ſame County with Dr. *Cowell*, bred in *Oxford*, a Fellow of *All Souls College*, where he proceeded a *Doctor* of *Civil Law*: He was made Chancellor of *Wells*, and afterwards of *London*, and *Maſter of the Requeſts*; in which Offices he behaved with great Integrity, Prudence and Diſcretion. In *Sept.* 1648. he and Dr. *Ryves* were ſent for to *Newport* in the Iſle of *Wight* by his Majeſty, to be aſſiſting to him in his Treaty with the Commiſſioners ſent from the *Parliament*: That Treaty taking no Effect, he retired to his Habitation at *Chiſwick* near *London*; where ſoon after that his Maſter was beheaded, he ended his Life. He was an excellent *Civilian*, and well verſed in Hiſtories, Eccleſiaſtical and Civil. He was one of moſt ſmooth Language, but rough Speech. Had there not been a maſculin Strength in his Matter, it had been marred with the Diſadvantage of his Utterance. He writ *De Uſu & Authoritate Juris Civilis* Romanorum, *per Dominia Principum* Chriſtianorum, Lib. 2. In this Book Dr. *Gerard Langbaine*'s Labours were ſo much, that he deſerved the Name of Co-Author. Pr. *Lond.* 1653, 1679. 8vo *Leydæ.* 1654. *Lipſ.* 1688. 12mo. V. *Fuller* W. 262, 3. *Wood*'s *Athenæ*, II. 125, 6. *Collier*'s Supplement. *Each.* II. 679. *Whitl.* Journ. 239. *a.* 330.

Sir M. Hale. Sir *Matthew Hale*'s Hiſtory of the Law is a Book in great Eſteem. It is very ſlovenly printed, the Errors of the Preſs being numerous and groſs.

Wood. *Wood*'s Inſtitutes of the *Imperial* and *Common Law* are in every Body's Hands; a Recommendation very full and ſatisfactory.

Sir R. Atkins. Sir *Robert Atkins* deſerves a Place in this Collection, who writ a learned Treatiſe, under the Title of "An Enquiry into the Power "of diſpenſing with *Penal Statutes*, with ſome *Animadverſions* up- "on a Book of Sir *Edward Herbert*'s, Lord Chief Juſtice of the *Com-* "*mon Pleas*, wherein Sir *Edward* vindicates the Judgment given "in Sir *Edward Hale*'s (*h*) Caſe." He writ alſo "Of the Power, Ju- "riſdiction and Privilege of Parliament; and the *Antiquity* of the "Houſe of Commons aſſerted; occaſioned by an Information in the "*King's Bench* by the Attorney General againſt the Speaker of "the *Houſe of Commons*, *Lond.* 1689. (*i*) with which is printed, A "Diſcourſe concerning the *Eccleſiaſtical Juriſdiction* in the Realm "of *England*, occaſioned by the late Commiſſion in *Eccleſiaſtical* "Cauſes (*k*)." The ſame learned Perſon pen'd a Defence of the

(*f*) *Fuller*'s W. Tit. *Devon.* *Wood*'s *Ath.* I. f. 160. *Kennett*, II. 681. *b.* *Nicholſon*, III. 177. *Spelm.* Gl. voce, *Tenura.* *Coke*'s Dectect. I. 63. A. Bp. *Laud*'s Hiſt. 235. *State Trials* I. 388. *Rapin* IX. 315. *Spelm.* Relig. 99. *Oldmixon* 18. *a.* (*g*) V. *Nicholſon* H. L. III. 176. (*h*) Fo. *Lond.* 1689. p. 58. V. *Nicholſon*, III. 63. (*i*) p. 74. Fo. (*k*) *Wood*'s *Ath.* II. f. 155, 173.

Lord *Ruſſel*'s Innocency, to which an Anſwer was put out, under the Title of The Magiſtracy and Government of *England* vindicated, being a Defence of the Proceedings againſt the ſaid Lord; ſuppoſed to be done by Sir *Bart. Shower*. This is writ in the true Spirit of Party and Paſſion, and with little Decency. Sir *Robert* replied in a further Defence of the ſaid Lord (*l*).

Dr. *Hickes* (*m*) Epiſtolary Diſſertation to Sir *Bart. Shower* ought to be recommended to the Peruſal of all Gentlemen and Lawyers, Antiquaries and Hiſtorians; in that there is to be found in it a great Deal of good Learning on the Antiquities of the *Laws of England*, wrote on Purpoſe for the Honour of our Laws, and for the Uſe of the Profeſſors thereof; and it is great Pity, but that this Treatiſe was printed ſeparately, the *Theſaurus*, of which it is a Part, being very ſcarce. Proper Books to be read with it, are Mr. *Cooke*'s Argumentum Antinormannicum (*n*), Mr. *Petyt*'s Rights (*o*) of the Commons, the Hiſtorical Eſſay on the Legiſlative Power of *England*, by Mr. *St. Amand* (*p*), and *Sadler*'s (*q*) Rights of the Kingdom. Dr. Hickes.

Mr. *Tyrrell* (*r*), a very honeſt and learned Gentleman, ought to be mentioned with Honour, as he was undoubtedly a ſincere Lover of Truth and Liberty. He has in his Writings given us the true Principles of Government and Property; and, in particular, a very rational probable Account of the *Engliſh* Conſtitution: What he has writ on the Subject are, *Patriarcha non Monarcha*, in Anſwer to Sir *Robert Filmer*, *Bibliotheca Politica*, in thirteen Dialogues, lately reprinted in Folio, and the General Hiſtory of *England* to the Reign of *Richard* II. incluſive: His Prefaces and Introductions to his Hiſtory are laboured, and very curious. Tyrrell.

I take it for granted, that moſt Gentlemen are in Poſſeſſion of the noble Edition of Mr. *Selden*'s Works, publiſhed by Dr. *Wilkins*; to whoſe ingenious Labours we are likewiſe indebted for a new Edition of the *Engliſh Saxon Laws*, much more complete than the former Editions of Mr. *Lambard* and Mr. *Wheloc*. It were to be wiſhed the Doctor would go on and give the World new Editions of ſome of our old *Engliſh* Hiſtorians, ſuch as *Gul. Nubrigenſis* (*s*), *Matthew Weſtminſter* (*t*), *Florence* of *Worceſter* (*u*), *&c.* Selden.

Spelman's Eng. Works and Remains are very neceſſary for our Antiquaries. Spelman.

If the *Oxford* Editor was a Man of a more Publick Spirit, he might gratify the Republick of Letters much more effectually in this Way, than by ſtinting us with ſo few Copies of thoſe Hiſtorians and Antiquaries he has publiſhed.

Monſ. *de Rapin Thoyras*'s Hiſtory of *England* ought not to paſs *ſub ſilentio*: This is, perhaps, *one of the beſt entire Hiſtories* we have of our Affairs. The Author was certainly a Man of Learning and induſtry; Honeſty and Candour are very viſible throughout the Whole. The Preface and Introduction to his firſt Volume, the Diſſertation on the Government, Laws, Manners, Cuſtoms and Language of the *Anglo-Saxons* (*x*), and that on the Origin of the Government of *England*, and on the Riſe, *&c.* and Characters of the Rapin.

(*l*) *State Trials*, III. 174, 193, 198, 1065, 1068. (*m*) *Maddox* H. Exch. p. 64. *Fort.* of Mon. Pref. 80, 1. (*n*) 8vo *Lond.* 1682. (*o*) 8vo Ib. 1680. (*p*) 8vo Ib. 1725. (*q*) 4to *Lond.* 1682. p. 319. (*r*) *Wood*'s *Ath.* II. 972. (*s*) *Nicholſon*, I. 157. (*t*) Ib. 179. (*u*) Ib. 149. *Tyrrell*, I. Pref. xiv. (*x*) *Rapin*, II. 135.

two Parties of the *Whigs* and *Tories* (*y*), are very exact and curious. His other Diſſertations are well pen'd, but of a particular Nature, and at preſent ſomewhat foreign to us (*z*).

Memorials of *Engliſh* Affairs from the Beginning of *Car.* I. to the Reſtoration, containing the Publick Tranſactions Civil and Military, with the private Conſultations, *&c.* of the Cabinet; with a Preface by Mr. *Rymer*. The Author appears throughout a Man of Learning and great Capacity, and no leſs remarkable Probity and Merit, and of the utmoſt Conſequence in Publick Affairs with reſpect to his Judgment and Intelligence. Some remarkable Parts of this Hiſtorical Account are (*a*), (1.) A Conference againſt *Cromwell*, repreſented under the Notion and Character of an Incendiary (*b*). (2.) Two remarkable Speeches on Excommunication and excluding from the Sacrament, by Mr. *Selden* and Mr. *Whitlock*; a (*c*) Letter of the Lord of *Drum* upon the ſame Subject of Excommunication. (3.) Two Speeches of Mr. *Whitlock* to the Lord Chief Baron *Wild* upon his being ſworn in and ſeated, and to Mr. Serjeant *Puleſton* and Mr. Serjeant *Warberton*, when they were ſworn Judges of the Common Pleas (*d*). (4.) Speech of the ſame upon his being appointed one of the Lords Commiſſioners of the Seals (*e*). (5.) A Speech of *Whitlock*'s concerning the Law and the Lawyers (*f*). (6.) His Speech to Mr. Serjeant *St. John* and the reſt of the Gentlemen who had received Writs to be Serjeants at Law (*g*). (7.) Debate between Lord *Fairfax*, *Cromwell*, *&c.* about marching into *Scotland*, when his Lordſhip quitted, and *O. Cromwell* was made the Lord General (*h*). (8.) A remarkable Conference between *Cromwell*, *Whitlock*, *&c.* upon the Defeat at *Worceſter*, about ſettling the Government (*i*), another between *Cromwell* and *Whitlock* upon the ſame Subject (*k*). (9.) Two Accounts of *Whitlock*'s Negotiation in *Sweden*, curious Pieces (*l*). The ſame ingenious Perſon has alſo writ Memorials of *Engliſh* Affairs from the Expedition of *Brute* to *James* I. inclusive, publiſhed by Mr. *Penn*, with a Preface by Dr. *Welwood*, Fol. *Lond.* 1709. p. 310. It is a pretty ſuccinct Hiſtory, and his Obſervations are pertinent and juſt. He was Chairman at the Conference at *Whitehall*, *April* 1657. pub. 8vo *Lond.* 1660. under the Title of Monarchy Aſſerted, p. 112 (*m*). Some of his MSS. ſtill remaining are, 1. A Treatiſe of the Power of Princes, eſpecially in Eccleſiaſtical Affairs. 2. Of the Power and Practice of Parliaments. 3. Of the Riſe and Perſecution for Religion. 4. An Abridgment of the Martyrology from the Beginning of the World; containing many noble Obſervations to the Honour of Religion and that divine Race of Men, who, in the faireſt Character, writ its Defence with their own, and not with the Blood of others (*n*). In the State Trials (*o*) is a Speech of *Whitlock*'s in Behalf of *James Nayler*, that from the Law of Nature, the Law of God, and the Law of the Land he ought not to be put to Death (*p*). Two Speeches of Mr. *Whitlock*'s about the Militia, and concerning a War (*q*): His Account of the *Oxford* Treaty (*r*): His Speech on the Debate touching Propoſitions for Peace (*s*):

(*y*) *Rapin*, XIV. 391. (*z*) Ib. IV. 343, 368.—V. 450. v. *Acta Regia*, I. 219, 227.
(*a*) *Ruſhw.* VI. 3. *Whitl.* M. p. 111. (*b*) *Ruſhw.* VI. 203. (*c*) *Whitl.* M. p. 163, 500. (*d*) Ib. 344, 392. (*e*) 372. (*f*) 415, & ſeq. 460, & ſeq. (*g*) 347. (*h*) 445, 6. (*i*) 491. (*k*) 523. V. 529. *a*. (*l*) 575, 583. (*m*) 646. (*n*) V. *Collier*'s Dict. and Supplement, Tit. *Whitlock*. (*o*) II. 273. (*p*) *Ruſhw.* IV. 525, 754. (*q*) Ib. V. 261. (*r*) Ib. 386. (*s*) Ib. VI. 4.

A Speech about the State of the Kingdom: Accuſed by Lord *Savil*, and his Speech in his own Vindication. *Ruſhw.* VI. 177. V. *Wood*'s *Athenæ*, II. Fol. *Lond.* 1721, 545. *Rapin* by *Tindal*, 8vo, XI. 16.

Our Student ought likewiſe to be furniſhed with the Gloſſaries of Sir *Henry Spelman* and the noble *Du Freſne*. Spelman and Du Freſne.

I ſhall conclude this Part of my Preface with two Paragraphs from the great Mr. *Locke* (*t*).

" When a young Gentleman has pretty well digeſted *Tully*'s " *Offices*, and added to it *Puffendorff de Officio Hominis & Civis*, " it may be ſeaſonable to ſet him upon *Grotius de Jure Belli & " Pacis*; or, which perhaps is the better of the two, *Puffendorff " de Jure naturali & Gentium*; wherein he will be inſtructed in " the natural Rights of Men, and the Originals and Foundations " of Society, and the Duties reſulting from thence. This *general " Part of Civil Law* and Hiſtory, are Studies which a Gentleman " ſhould not barely touch at, but conſtantly dwell upon, and never " have done with. A virtuous and well-behaved young Man, that " is well verſed in the *general Part of the Civil Law* (which con- " cerns not the Chicane of private Caſes, but the Affairs and Inter- " courſe of civilized Nations in general, grounded upon Principles " of Reaſon,) underſtands *Latin* well, and can write a good Hand, " one may turn looſe into the World, with great Aſſurance, that he " will find Imployment and Eſteem every where.

" It would be ſtrange to ſuppoſe an *Engliſh* Gentleman ſhould " be ignorant of the *Law* of his Country. This, whatever Station " he is in, is ſo requiſite, that from a Juſtice of the Peace, to a " Miniſter of State, I know no Place he can well fill without it. " I do not mean the Chicane or wrangling and captious Part of " the *Law*; a Gentleman, whoſe Buſineſs is to ſeek the true Mea- " ſures of Right and Wrong, and not the Arts how to avoid do- " ing the one, and ſecure himſelf in doing the other, ought to be " as far from ſuch a Study of the *Law*, as he is concerned diligent- " ly to apply himſelf to that wherein he may be ſerviceable to " his Country. And to that Purpoſe, I think the right Way for a " Gentleman to ſtudy *our Law*, which he does not deſign for his " Calling, is to take a View of our *Engliſh* Conſtitution and Go- " vernment, in the ancient Books of the *Common Law*; and ſome " more modern Writers, who out of them have given an Account " of this Government. And having got a true Idea of that, then " to read our Hiſtory, and with it join in every King's Reign (*u*) the " *Laws* then made. This will give an Inſight into the Reaſon of " our *Statutes*, and ſhew the true Ground upon which they came to " be made, and what Weight they ought to have."

At *Chapter* XVII. *Note* 5. an Enquiry happens whether the three-fold Diviſion of the *Engliſh* Laws be imaginary, or not; and what is the genuine Import of the Word Laga. Bp. *Nicholſon* (*x*) contends, that Laga (in Compoſition with Dæna, Mýncena, and Wert-ſexena, in any of our *Saxon* Remains) ſignifies properly a *Country*, *Diſtrict* or *Province*; neither can it be otherwiſe rightly tranſlated. Diſſertation upon the Word Laga.

(*t*) *Opp.* III. 84. V. *Remains*, 8vo *Lond.* 1720. p. 231. 348. & ſeq.

(*u*) Mr. *Tyrrell*, in his Hiſtory of *England*, at proper Periods; and, from the Conqueſt, at the End of each Reign, gives the *Laws*, and the Titles of all the *Statutes*, enacted by every King.

(*x*) *Eng.* Hiſt. Lib. I. 113. *Scotch* Hiſt. Lib. Pref. xxix. d. e. præmiſſ. W. xv.

Before

Before I give his Reaſons, I ſhall ſet down what I find of each of theſe Titles or Laws.

Mercenſleaga. V. Whitl. Hiſt. p. 4. Sadler 46.

The Reign of *Offa* is memorable upon ſeveral Accounts; amongſt others, a Body of Laws publiſhed under the Title of Mepcenɼ-Leaga; that is, the Laws of the *Mercians*; ſo called, not from *Martia*, the Wife of *Gwinteline*, as *R. Higden* (*y*), *J. Wallingford* (*z*), *J. Brompton* (*a*), *Geoffrey Monmouth* (*b*), *Aluredus Beverlacenſis* (*c*), and from them *Sheringham* (*d*) and the Lord *Coke* (*e*) would have it; but from the *Mercians*, by whoſe Kings they were firſt enacted (*f*). This ſerved as a Pattern to his Succeſſors, and the greateſt Part of them were inſerted in King *Alfred*'s Laws, publiſhed towards the End of the then following Century (*g*).

Weſt-Saxon-Leaga.

Ina, King of the *Weſt-Saxons*, publiſhed a Body of Laws, entitled Wepɼ-Saxon-Leaga, that is, Laws of the *Weſt-Saxons*, which ſerved for a rough Draught to *Alfred* the Great, his Succeſſor (*h*). In the Laws of *Hen.* I. (*i*) there's one entitled, *Conſuetudo Weſt-Sex.* Wepɼ Seaxne Lage] Occiduorum *Saxonum* Lex, vel Jus cui parebant Occidui & Auſtrales *Saxones*, Cantianique. The Law of the *Weſt-Saxons* (*k*).

Denelage.

Canute, upon his Return out of *Denmark*, where Troubles had called and detained him, convened the Great Council, in order to have the *Daniſh* Laws inforced; which, for ſome Time, had been obſerved in Part of the Kingdom, particularly in *Northumberland*. There were then in *England* three Sorts of Laws; namely, the *Weſt-Saxon*, *Mercian* and *Daniſh* Laws. But theſe laſt had not the Sanction of Public Authority, till *Canute*, after his Return from *Denmark*, put them on the ſame Foot with the ancient Laws of *England* (*l*). Denelage, the Law of the *Danes*, by which one third Part of *England* was governed before the Conqueſt (*m*). In LL. *Edw.* Confeſſ. *Noricorum* ſeu *Norwegienſium* appellatur (*n*). Lex *Danorum* in Leg. *Edw.* c. 10. de *Romeſcot.* Omnis qui habuerit XXX denariatus vivæ pecuniæ (*o*) in domo ſuâ, de ſuo proprio (*Anglorum* Lege) dabit Denarium Sancti *Petri*: Et Lege *Danorum* Dimidiam Marcam: Danelaga, *cap.* 12, *&c.* Denelaga in LL. *Hen.* I. cap. 6. *Denelae* in LL. *Willielmi Nothi* vernaculis, cap. 3. appellatur (*p*).

Sir *Matthew Hale* (*q*) takes Notice of theſe Laws under their threefold Diviſion: He calls them *Provincial* Laws, of ſeveral Natures, which obtained in ſeveral Parts of the Kingdom, and what Counties were governed by each Law; ſo has Mr. *Cambden* (*r*), *Spelman* (*s*), *Cowell* (*t*), *Selden* (*u*), *Du Freſne* (*x*), *Phillips* (*y*) and Mr. *Tyrrell* (*z*).

Bp. Nicholſon's Objections.

What the *Biſhop* has upon this Article, I ſhall give in his own Words: " I am not ſatisfy'd with the Opinion of *Camden*, *Lam-*" *bard*, *Spelman*, (and generally all our *Engliſh* Antiquaries and Hi-

(*y*) Ed. *Gale* 202. (*z*) Ib. 538. (*a*) X. *Script.* c. 956. (*b*) De Orig. *Brit.* L. 1. c. 20. V. *Du Freſne* Lex *Martiana.* (*c*) Ann. p. 19. (*d*) p. 125, 6. (*e*) Pref. 3. Rep. 4. *a.* (*f*) *Nicholſon*, d. e. XVI. *Tyrrell*, I. B. 1. p. 13. (*g*) *Kennett*, I. 7. *Tyrrell* ut ſup. *Spelm.* Concil. (*h*) *Rapin*, I. 209. *Spelm.* Lex *Merciorum.* *Du Freſne* Lex *Weſt-Saxonum.* *Brompt.* ubi ſup. (*i*) W. p. 265, 70. (*k*) *Kennet*, I. 46. N. b. (*l*) *Rapin*, II. 39. (*m*) *Spelm.* Lex *Danorum.* (*n*) W. 207. (*o*) Ib. 198. N. N.B. *The Ro. Cap.* W. *denotes* Wilkins's Sax. Laws. (*p*) *Brompt.* ubi ſup. *Du Freſne* Lex *Danorum.* *Kennett*, I. 94. N. g. (*q*) Hiſt. Law, p. 55, 6. 63, 86, 105. (*r*) Div. *Brit.* CLXVIII. (*s*) Gl. (*t*) *Cowell* Int. *Merchenlage.* (*u*) II. 997, 8. (*x*) Lex *Danorum.* (*y*) Dict. *Merchenlage.* (*z*) I. Introd. CXVII.

" ſtorians,) That there were in this Kingdom before the Conqueſt " three Codes or Digeſts of Laws; which from the ſeveral Coun- " tries wherein they firſt prevailed, were rightly named the *Weſt-* " *Saxon*, *Daniſh* and *Mercian* Laws. This Conceit is derived down, " without due Examination, from the moſt early Tranſlators of our " *Saxon* Records; who took it for granted that, Laga (in Wer- " ſexena Laga) was a Word of the ſame Signification with the *Nor-* " *man Ley*. Whereas Laga, or Lage, is properly a Country or Di- " ſtrict: So it ought to have been tranſlated in the Laws of *Ethel-* " *red* (*a*) On Myrcenalande æfter Englalage. In regione Merciorum " ſecundum Angliæ Leges, rectiùs — *quæ poſtea ditio Anglorum* — " In thoſe of *Canute* (*b*), on Denalage, on Englalage — in Danelaga — in " Englalaga—it ſhould be, *intra ditiones Danicas & Anglicas* (*c*)— " In thoſe of *Edward* Conf. (*d*), *Erat Lex* Danorum, Norfolk, &c. " Pro *Lex* itidem, hìc loci *Ditio* ſive *Provincia* ſubſtituenda eſt.

In his *Scotch* Hiſtorical Library (*e*), he ſays, " That this Obſervation " of his had the good *Luck* to be approved by a very learned Per- " ſon (Dr. *Geo. Hickes*) (*f*), who (by the Conſent of all our modern " Antiquaries) underſtood the *Saxon* Language the beſt of any Man " of his Time: In Mr. *Selden*'s (*g*) Edition of the *Confeſſor*'s Laws " the *French* Words *Danelae*, *Merchenelae*, *Weſtſexlae*, are render- " ed by Lex *Danorum*, &c. This Tranſlation, in many Places, ap- " pears forced and unnatural; *e. g.* in the *French* we read, Que en " *Danelae* fruiſſe la pais (*h*), rendered by Mr. *Selden*, Qui in *Dano-* " *rum* lege violaverit pacem regis [Danelaga;] whereas, if we will " have it intelligible, it muſt be, Qui in provinciâ *Danorum* viola- " verit, &c. (*i*) LL. *Ed.* & *Guthr.* cap. 7. (*k*) Denalaga ſignifies the " ſame as *Mid. Denum* in other Chapters of thoſe Laws, as in " cap. 12. LL. *Canute* R. 'tis On Wert-ſeaxon, ſo in the 14th it is " On Denelaga, in the 13th On Myrcean (*l*). The Word Lag is fre- " quently met with in the like Compoſition with the proper Names " of Countries, in the old *Iſlandiſh*, *Daniſh*, and *Swediſh* Wri- " ters; which, if Sir *Henry Spelman* had obſerved, he had ne- " ver miſinterpreted theſe Words as well as *Oſwalde*'s *Laws* (*m*), " &c."

The ſame learned Perſon has more to the Purpoſe in his Epiſto- lary Diſſertation to Dr. *Wilkin*'s *Saxon Laws* (*n*), where he obſerves, " that * *Inas* was the firſt who gave Laws to the *Weſt Saxons*, where- " in are many Things, which relate to the State of the *Welſh*, but

(*a*) W. p. 102. (*b*) Ib. 135. (*c*) *Scotch* H. L. (*d*) Ib. XXXI. *Eng.* H. L. I. 113. W. 107. (*e*) Pref. XXIX. (*f*) d. e. 87. *a.* (*g*) Opp. II. 1640. *Eadmer.* p. 173. (*h*) W. 219. *Seld.* II. 1642. III. (*i*) *Ingulph.* Ed. *Ox.* p. 88. (*k*) W. 52. (*l*) W. 135. (*m*) V. Concil. Brit. I. 432. & Monaſt Angl. I. 120. *Hickes* d. e. 87. *a.* *Skinner* & Onomaſt. W. 98. N. (*n*) W. 14. *Sammes* 569.

* —— *Saxonibus Occidentalibus* leges primò dedit *Inas.* In his plura ſunt quæ *Wallorum* ſta- tum reſpiciunt; ſed de Wylfce-laga nullum prorſus Iota. Has, poſt ſeſquiſeclum, recenſuit *Æl- fredus* ipſorum *Occidentalium Saxonum* rex verè magnus; qui palam legum ſuarum corpus omne ex dicti illius cognati *Inæ*, ex *Offæ* regis *Merciorum*, & ex *Æthelberti* regis *Cantiorum*, legibus de- promptum, & unanimi ſuorum conſilio confirmatum: Neque hic tamen quicquam magis de Myrce- na-laga, quàm de Cantpara-laga — *Spelmannus* leges illas *Merciorum*, è quibus *Ælfredi* partim ſunt conditæ, ab ipſo rege *Offâ* primò latas credit; & nullâ protinus ex parte ab *Martiâ Britannâ*: — Legem *Danicam* in provincias *Eaſtanglorum* & *Northanhymbrorum* introduxiſſe *Gu- thrunum* (illorum regem) exiſtimat Eques noſter; & a tempore *Edgari* regis uſque ad *Edwardum* Confeſſorem, dum penes *Danos* ſumma rerum habebatur, Leges *Anglorum* penitùs obmutuiſſe. Ego autem ne hilum meherculè in decretis *Æthelredi* regis video, quod non æque *Anglorum* ſapit inge- nium

" there is not one Tittle of Wylrce-laga. So *Alfred*, King of the " *Weſt-Saxons*, extracted a Body of Laws out of thoſe of King *Ina*, " *Offa* King of the *Mercians*, and *Ethelbert* King of *Kent*; which " was confirmed by the unanimous Advice of his People; and yet " the Words Wyrcena-laga or Lantpana-laga are no where found in " them. The Biſhop ſtarts another Objection againſt this threefold Law " from the Diſagreement between *Higden*, *Geoffry Monmouth*, *&c.* " and *Spelman*, who ſays, that the Laws of the *Mercians* were en- " acted by *Offa* their King, and not by *Martia* Wife of *Guinteline*. " Another State of the Caſe is taken from *Spelman*, who is of " Opinion that *Guthrun*, King of the *Eaſt-Angles* and *Northum-* " *brians* introduced the *Daniſh* Laws into thoſe Provinces; and " that from the Times of King *Edgar* to *Edw.* Confeſſ. (all which " Time the *Danes* were in Poſſeſſion) the *Engliſh* Laws were ſuſ- " pended and ſilent. The *Biſhop* ſays, he does not ſee any the leaſt " Thing, in the Decrees of King *Ethelred* II. but what correſponds " with the Genius of the *Engliſh*, equally with the Laws of *Ina* " and *Alfred*; the ſame (*o*) Mulcts and Puniſhments both to *Danes* " and *Engliſh*, that you will ſcarce find any of them different. *Ca-* " *nutus* acknowledges himſelf King of all the *Engliſh*, and that his " Intention was that his *Engliſh* Laws ſhould be eſtabliſhed *more* " *Anglorum*, becauſe they chiefly reſpect their Civil State, ſuch as " **Peregeat**, **Bocland**, &c. He calls in Queſtion the Laws of " *Edw.* Confeſſ. (falſely ſo called) confirmed by *W.* I. (*p*) and ſays, " they were forged and compiled by the Author of the Dialogue " *de Scaccario* (ſince publiſhed by Mr. *Madox*) not to mention the " Poſthumous Laws *Hen.* I. and that he was the firſt who led the " Way in this Error about Wert-Saxen-laga, *&c.* He concludes, if " *Spelman* had well conſidered theſe Things, he would have reject- " ed this Dream *de Triplici Lege*, neither would he ſo inadvertent- " ly have admitted **Oſwald's Law** (an Hundred well known in " *Worceſterſhire*) into the Number of his *Eccleſiaſtical Laws*. Thus " far the *Biſhop* (*q*)."

Anſwer. By the Leave of ſo great a Man, I may plead in Behalf of thoſe who went before him, without reſting any Thing on my own Strength, or preſuming to declare any Opinion I may have on ſo nice a Subject.

In his *Engliſh* Hiſt. Library (*r*), and the Epiſtolary Diſſertation, the Biſhop ſays, that Laga properly and manifeſtly ſignifies a *Country*, *Diſtrict* or *Province*. In his Preface (*s*) to the *Scotch* Hiſt.

nium cum iis quæ ab *Inâ* & *Alfredo* ſtatuebantur; immò eædem omninò mulctæ ſunt & pœnæ peccantium *Dacorum* & *Anglorum*, quod alias vix offendes. *Canutus* equidem ealler Englalanber Lyning ſe profitetur, Legeſque ſuas *Anglicas* more *Anglorum* ſtabilitas eſſe voluit; utpote ſtatum horum civilem, quoad Þepegeata, Bocland, *&c.* præcipuè tangentes - - - - In errorem hunc primum omnium incidiſſe puto Auctorem Dialogi *de Scaccario*; quem & Auctorem juxta exiſtimo legum omnium [Pſeudonymarum (1)] *boni regis* (2) Edovardi, *quas* Gulielmus *Baſtardus poſtea confirmavit*, ne dicam & *Henrici* primi planè poſthumarum - - - Hoc præcurſore, in eundem lapidem *Lambardum* aliquoties pedem vides impegiſſe - - - Hæc ſi animadvertiſſet Cl. *Spelmannus*, ſomnium illud de *triplici lege* prorſus repudiârat; neque Oſwalds Law (3) (Centuriatum in comitatu *Wigorniæ* bene notum) in numerum *Legum Eccleſiaſticarum* oſcitantiùs admiſerat.

(*o*) V. *Spced.* L. VIII. c. 3. §. 6, 7. (*p*) Script. poſt *Bed.* 600. *Seld.* II. 946, 997, 8.
(*q*) *Spelm.* Relig. b. 4. 36, 40 — 42. *Camd.* 521 *a.* — 525. o. 526. s. *Skinner* ad v. in Et. *Onomaſt.*
(*r*) I. 113. — *Scotch* H. L. Pref. XXIX. (*s*) Ib. XXXII.

(1) *Hickes* d. e. 95, 6. (2) V. *Lamb.* Archion. p. 126. *Wheloc.* p. 138. (3) Concil. *Brit.* I. 432. V. Monaſt. *Angl.* I. 120. *Hickes* d. e. p. 86.

Library, it is, that Laga (in Compoſition with Dæna, &c.) ſignifies a *Country* or *Diſtrict*. I can't critically determine in the Caſe; but I never heard before, that it was of the Nature of compound Words to give quite another Turn, or rather Signification to an uncompounded Word, as his Manner of Expreſſion ſeems to intimate.

As to the firſt Inſtance, in ſupport of his Opinion, *viz.* the Proem to *Ethelred*'s Laws, æften Ænglalage — The Word (æften) is rendered in *Latin*, according to Mr. *Somner* in his *Saxon* Dict. by *poſt*, *ſecundùm*. The next Inſtance ſeems, I muſt acknowledge, very natural; and yet, in the ſame Law pihte-lage, is render'd *juſtam legem*. A third Inſtance is, one of the Laws of *Edw.* Conf. The Title runs — Lex *Noricorum* & *Danorum* in *Britannia* — "Erat Lex *Nori-*" *corum* and *Danorum* Norfolk, (*t*) &c. I don't ſee the Abſurdity, but that the Conſtruction may be, "The Law of the *Norwegians* and *Danes* was or obtained in the Provinces of *Norfolk*, *S.* &c. — *Ditio* does not a Whit help, or better the Senſe. Where he vouches Dr. *Hickes*, I ſuppoſe, is meant what he ſays of **Oſwald's Law**, in the following Manner.

Oſwaldes Law (*u*), Hundredum ſic appellatum ab *Oſwaldi* juriſdictione, quæ *Saxonicè* laga dicitur, that is, a Territory, or Tract of Country inveſted with a particular legal Juriſdiction and legal Privileges and Franchiſes: See an Account hereof in *Camden* (*x*) and *Wilkins* (*y*). Oſwaldes Law.

There is no other Paſſage in the *Theſaurus* which looks this Way, and, in the *Index vocum*, there's no ſuch Word at all as Laga. As to the Critic on Mr. *Selden*, "Qui en *Danelae* fruiſſe la pais — "He who according to the *Daniſh* Law ſhall preſume to violate, "or impeach the King's Peace" — makes, I ſhould think, no improper Senſe. The Biſhop likewiſe vouches Sir *Henry Spelman* (*z*), where it is, "Our *Saxons*, though divided into many Kingdoms, yet "were they all one in Effect, in Manners, Laws and Language: "So that the breaking of their Government into many Kingdoms, or "the reuniting of their Kingdoms into a Monarchy, wrought little "or no change amongſt them touching Laws. For though we talk "of the *Weſt-Saxon Law*, the *Mercian Law* and the *Dane Law*, "whereby the Weſt Parts of *England*, the middle Parts, and thoſe "of *Norfolk*, *Suffolk* and the North were ſeverally governed; yet "held they all an Uniformity in Subſtance, differing rather in their "Mulcts, than in their *Canon*, that is, in the Quantity of Fines and "Amerciaments, than in the Courſe and Frame of Juſtice." From which Paſſage, the Biſhop ſays, it appears, that the learned Author (before his Death) was pretty much of his Opinion. But, in the Epiſtolary Diſſertation (*a*), it is worded otherwiſe, after giving the Whole *verbatim*, he goes on, "His non obſtantibus, volens "fateor nolenſque illum hic loci (ſicut alibi) (*b*) triplicem legum ve-"terum diſtinctionem in Wert-Scaxna-Laga, Mynecna-laga & De-"nelaga admittere." As to what is ſaid, that in King *Ina*'s Laws, and the Extracts made by King *Alfred*, there are no ſuch Words, as Wylice-Laga, Mynecna-Laga, or Lantpana-Laga, I may admit it; notwithſtanding the Word Laga frequently occurs by itſelf, and

(*t*) V. Script. poſt *Bed.* 607, 59. (*u*) d. e. 87. *a.* (*x*) Ubi ſup. (*y*) 98 N. *Spelm.* Relig. p. 4. (*z*) Ib. b. p. 49. (*a*) XV. (*b*) *Spelm* Gl. v. Lex *Anglorum* in *Britannia*.

in

in Compoſition in other of the *Engliſh-Saxon* Laws. As to the Diſagreement between *Higden*, *Geoffry* of *Monmouth*, &c. and *Spelman*, the Anſwer ſeems eaſy. The Monkiſh Writers were not over exact in Matters of Fact, or in Point of Truth: Their Writings had a ſtrong Smack of the Cloiſter! *Spelman* had great Lights: He was contemporary with the moſt conſiderable Men in our Antiquities, that ever were known, and was furniſhed with better Vouchers than the dark Ages could poſſibly afford. If the *Daniſh* Laws differ'd ever ſo little, though it were but in the Quantity of their *Fines* and *Amerciaments*, yet it is a Difference; and they were *Daniſh* Laws before they were eſtabliſhed *more Anglorum*. As to the Charge of Forgery on *Gervaſius Tilbur'*, or whoever elſe was the Author of the Dialogue *de Scaccario*, the Accuſation is eaſy, and Proofs are not always obvious.

It comes next in Courſe to enquire what our Antiquaries, and Philologiſts have on the Word Laga; but I ſhall firſt ſet down a few Paſſages out of our *Engliſh-Saxon* Laws.

In LL. *Hen.* I. (*c*) 2. it is, " Murdra etiam retro ab illo die quo " in regem coronatus fui omnia condono, & ea quæ a modo facta fu- " rint juſtè emendentur, ſecundum *lagam* regis *Edwardi* (*d*). *La- " gam* regis *Edwardi* vobis reddo cum illis emendationibus quibus " eam pater meus emendavit conſilio Baronum ſuorum. Eadem " habentur in charta *Johannis* regis apud *Matth. Paris* (*e*) *Ann.* " 1213. & *Ric. Hagulſtad.* de geſtis regis *Stephani Ann.* 1135. Eæ- " dem leges, cap. 54. Ubi vero aliquis eorum optionem habet per " juſtitiam amicitiæ, vel *Lagæ*, & amicitiam eligit, fiet hoc ita " firmum ut ipſum judicium, cap. 66. Si quis ordinatorum aliquem " verberibus vel vinculis, vel aliquatenus affligat, emendet ei ſicut " rectum ſit, & Epiſcopo emendationem Altaris, regi vel domino " plenam Mundbreche, vel plena *Laga* perneget, cap. 66. *Laga* " *Anglorum*, *Denelaga*, &c. vide *Lada*, Lex. Charta *Gulielmi* Co- " mitis *Flandriæ*, Ann. 1127. ſuper confirmatione conſuetudinis " villæ *Sancti Audomari*: *Laghas*, ſeu conſuetudines ſupra ſcriptas " perpetuò eis concedo & ratas permanere præcipio; eadem haben- " tur in Charta *Theodorici* comitis *Flandriæ*. Ann. 1128. Leges " *Ethelredi* apud *Wenetyngum*, §. 6. de accuſatis: Et omnis emat " ſibi *Lagam* 12 Oris, dimidium *Landefrico*, dimidium *Wapentako*. " Et §. 11. Et omnis Monetarius, qui infamis ſit, redimat ſibi *La- " gam* 12 Oris. *Lagam*, i. e. *Legem*, quam **Law** dicimus, Vox " *Saxonica* (*f*)." This Charter of *Hen.* I. ſeems pretty ſtrong to clear the Point. Bp. *Nicholſon*, in his Bickerings with *Atterbury* on the Word Laga (*g*), ſays, " It muſt be a great deal (more, I believe, " than he has to ſay) that's ſufficient with me; for I am ſtrangely " hardened and impenitent in this Matter, and not to be wrought " off from any of my Opinions by ſuch Arguments, as I moſtly " meet with in his Book.

" Regnum *Angliæ* trifariàm dividitur in regno *Britanniæ*, in " *Weſt-Sexam*, & *Mircenos*, & *Danorum* Provinciam —— Legis e- " tiam *Angliæ* trina eſt partitio ad ſuperiorem modum. Alia enim " *Weſt-Saxiæ*, alia *Mircena*, alia *Denelaga* eſt —— In multis autem

(*c*) W. 234. b. (*d*) *Matth. Par.* 47, 11, 16. (*e*) Ib. 202. 34, 39. — *Du Freſne*, v. *Laga*. (*f*) Ib. Gl. (*g*) *Scotch* H. L. Pref. xxxi.

" differunt, ſed in multis conveniunt. Ipſorum etiam jura comita-
" tuum per provincias plerumque diſſentiunt, ſicut (videlicet) cupi-
" ditate & maligna profeſſorum deteſtanda ſtudia graviora nocendi
" genera legalibus ſtatutibus (*h*) adjecerunt. Tanta quippe rerum
" perverſitas & malorum affluentia eſt ut definita legis veritas, vel
" ſtabilis medicinæ providentia rarò poſſit inveniri: ſed ad majo-
" rem omnium confuſionem novus implacitationis modus exqiritur,
" nova nocendi fraus invenitur, tanquam parum noceat quicquid
" ante fuerit & pluris eſſe judicetur, qui pluribus plus nocue-
" rit (*i*)."

Laze, pronounced as *Laghe*, An uſual Cuſtom, a Law, alſo a Tradition (*k*).

Cowell to the ſame Purpoſe ad vv. **Laga, Lageman, Merchenlage.**

Laza, *Lex*, the Law, *g* in *w*, ut ſæpe, mutato *Latino-Barbaris*, *Laga*, ex quâ voce & *Man* conflatum eis *Lagamannus*, pro viro probo (*l*), & ut dicunt, *legali*. Ita *Spelmannus* in voce. Ego verò ſub eadem *Thainos*, quos ita vocant, *Barones* ſcil. *Sacam* & *Socam* (i. Juris dicendi poteſtatem) habentes comprehenſos exiſtimo (*m*).

In *Edw.* Conf. Reign there was in *Lincoln*, as 'tis ſet down in *Domeſday-Book*, 1070. Inns for Entertainment, & 12 *Lagemen* having their *Sac* and *Soc*. Camd. (*n*)

Lagaman. Vox occurrit in LL. *Edw.* Conf. (*o*) & in Lib. *cenſ.* (*p*)

Lagamannus. Legalis, homo legis, non exlex; ex *Saxon* laȝh, *Lex*, & *Man*, Homo. *Lahman* in Senatus-conſulto * de monticulis *Walliæ*, cap. 3. apud *Lambardum*. Leges *Edw.* Conf. cap. 38 (*q*). Poſtea inquiſiſſet juſtitia per *Lagamannos* & per meliores homines de Burgo vel de Villâ. *Domeſdei:* Comes *Picot* —— habet hereotum de *Lagemannis*, 7 Lib. & 1. Palefridium & arma unius militis —— De Lagemannis *Danicis* agit jus aulicum *Norvegicum* vetus, cap. 33. & ejus interpres *Janus Dolmerus*: ut & *Joan. Stiernhookus*, Lib. de jure *Sueonum* vetuſto, p. 18, 34 & alibi (*r*).

Merchenlege, vel *Merchenlae*. V. *Skinner* & Chron. *J. Wallingford*, Ed. *Gale*, 538. l. 20.

Weſt-Sexenelae. V. *ib.* & V. *Skinner* — *Et Gen.* V. **Law**. V. Chron. *Saxon.* nominum locorum explicat.

Dr. *Wilkins*, in the Gloſſ. to his *Saxon* Laws gives much the ſame Account with Mr. *Selden*, of both, from *Gervaſius Tilbur'*.

Saxones laȝ pro lege ſumunt (*s*).

Lagamannos, i. e. *Legitimos* viros (*t*).

Lada in LL. *Ethelredi* apud *Venetyngum* editis, §. 17. ut & in capitulis ejuſdem, §. 1. Purgatio eſt, quia quis per *Legem* (quæ vox pro ipsâ purgatione canonicâ & vulgari crebro uſurpatur) ſe purget a crimine impacto, &c. (*u*)

In *Hickeſii* linguarum Vet. Sept. Theſauro in Grammat. *Anglo-Saxon-Mœſo-Gothica*, hæc occurrunt: Cimbrice ꝥhœꝩ Lœȝ, Lœȝbu, &c. i. e. Hæ *leges* ſanxerunt, &c. (*x*)

(*h*) MSS. *Seld.* Scacc. *ſtatibus* legunt. (*i*) W. 239, 6. (*k*) *Verſtegan* 178. *Spelm.* Reliq. p. 3. (*l*) *Skinner* ad v. (*m*) V. *Camd. Brit.* in *Lincolniâ*, & *Co. Lit.* 58. *a. Somn. Sax.* Dict. (*n*) Edit. *Gibſon* 468. (*o*) Cap. 38. (*p*) V. *Skinner. Blount.* * W. 125. *Fort.* Mon. p. 55. (*q*) W. 209. (*r*) V. *Du Freſne* ad v. (*s*) W. 200. N. a. in *Felagus*. (*t*) Ib. 209. N. (*u*) *Hoffman*, Lex Univerſ. in voc. (*x*) Ex *Volupſ.* Stroph. 21.

Laʒa. *Lex.* **Law.** *Lagamannus. Lagemannus.* Lageman. Homo *legalis*, ſeu *legitimus*, & ut juriſconſulti loquuntur, probus & *legalis*, non exlex, non infamis, ſed qui rectus ſtat in curiâ (*y*). *Lahman. Laghſlite.* Tranſgreſſio *legis*, legis violatæ pœna; propriè, ruptio *legis* (*z*).

I have one Inſtance before me, where the Biſhop himſelf admits Laʒa, in Compoſition, to ſignify Law; 'tis in his Preface to the *Iriſh* Hiſtorical Library (*a*), where he ſays, that *Snorro Stirloſon* was chief Legiſlator (Laʒman, *Legiferus*) in *Iſland*

As it is the profeſt Buſineſs of Philologiſts, and thoſe who write Gloſſaries, to ſift Words to their utmoſt Original, 'tis not to be ſuppoſed but that *Lambard*, *Spelman*, *Somner*, *Selden*, &c. who were the moſt converſant in our *Anglo-Saxon* Antiquities, have acted in their Searches and Reſearches with the greateſt Induſtry, Sincerity and Truth. They could have no Ends to ſerve; and to them I muſt refer the curious Reader.

Textus Roffenſis. In the *Textus Roffenſis* (a moſt venerable Monument of Antiquity, belonging to the Church of *Rocheſter*; which, beſides the Affairs of that Cathedral, furniſhes us with the Laws of four *Kentiſh* Kings, *Ethelbert* (*b*), *H. Lothere*, *Eadred* & *Withred*, omitted by *Lambard*) Mention is made of Mencenlaʒa (*c*).

Saxon Chronicle. I find in the *Saxon* Chronicle Mýncna londe (*d*), *Merciorum* terra. Mýncna-peode (*e*), *Merciorum* terra. Mýncena ꝑice (*f*), *Merciorum* regnum. Weſt-Seaxna lande (*g*), *Occidentalium Saxonum* terra; Weſt-Seaxna ꝑice (*h*), *Occidentalium Saxonum* regnum.

If Laʒa, in Compoſition with Weſt-Seaxna, Mýncena, &c. ſignifies a *Country*, *Province* or *Diſtrict*, I wonder it ſhould not once occur in the *Saxon* Chronicle; but, as is obſervable in the Inſtances cited above, Londe, Lande, peode, * ꝑice, are ſubſtituted inſtead of the Word [Laʒa]; by which it appears, that Laʒa was not taken, or underſtood in the Biſhop's Senſe at that Time; and in the ſame Chronicle [Londe (*i*)] every where, taken ſimply, anſwers to the modern *Engliſh* Word [*Land*]; ſo Laʒa (*k*) every where ſignifies **Law**, as ꝑihte laʒe, *juſtæ leges*; unlaʒa (*l*), *injuſta*; betʒta laʒa (*m*), *meliores leges*; ʒode laʒa (*n*), *bonæ leges*; betʒtan laʒan (*o*), *optimas leges*. It may be objected, that the *Saxon* Chronicle is abſolutely ſilent as to the three-fold Diviſion of Laws; neither does it make Mention of any Laws enacted by *Offa*, *Ina* or *Canute*; much leſs under the Denominations of *Mercian*, *Weſt-Saxon* or *Daniſh* Laws. I anſwer, that the *Saxon* Chronicle is a plain, ſimple Narration of Fact, as Battles fought, Ravages and Inroads committed, Foundations of Religious Houſes, and the Ceremonies obſerved upon ſuch Occaſions; Deaths of Biſhops and Abbots, and who ſucceeded them; Caſualties, Prodigies and Portents. But as to the enacting and promulgating of Laws, the Diſtribution of Juſtice, or any Thing indeed which relates to the Nature of Civil Government, nothing at all occurs; which I think a full Anſwer to the Objection. † And here it may not be improper to obſerve, that, if our Antiquaries in

(*y*) *Spelm.* (*z*) *Holyoke.* (*a*) XXI. (*b*) W. p. 1.—14 *Eng.* Hiſt. Lib. II. 148. V. *Fort.* Mon. 81, 2. (*c*) Ib. (*d*) pp. 108, 110. (*e*) Ib. (*f*) Ib. 136. (*g*) Ib. 15, 19. 40, 27. & alibi. (*h*) Ib. 18, 15, 31, 25. & alibi. * Mrs. *Elſtob.* Hom. p. 42. (*i*) *Saxon.* Chron. pp. 110, 131. (*k*) Ib. 188, 194, 198, 9. 208. (*l*) Ib. 188, 198. (*m*) 194. (*n*) 199. (*o*) 208. † See *Strype*'s Life of Sir *John Cheke*, Mem. Lit. Ap. 1727.

their Tranſlations of the *Saxon* Laws and Antiquities, had follow'd another Method, and given us an *Engliſh* inſtead of a *Latin* Interpretation, it would have been more natural and eaſy: Firſt, as there is no Sort of Analogy between the *Latin* and *Saxon*; and, in the next Place, an *Engliſh* Tranſlation would at the ſame Time preſerve the original *Saxon*, and give us the Propriety of the preſent *Engliſh*; for want of which, ſeveral Words paſs for obſolete or rather barbarous; whereas, if regard be had to the original *Saxon*, they are really genuine and ſignificant: Thoſe who are converſant in the *Saxon* and *Northern* Languages will juſtify this Obſervation: The preſent Sir *John Forteſcue*, in particular, in his learned Remarks to the Book of his Anceſtor, concerning abſolute and limited Monarchy (*p*).

Further, after all the learned Enquiries which have been made, our Antiquaries are yet much at a Loſs, eſpecially with reſpect to the *Saxon* Law-Terms, which are in the Body of Law made by King *Hen.* I. publiſhed in the Appendix to *Wheloc's Saxon Bede*. It was once propoſed by a very conſiderable Man to Dr. *Hickes* to make a Gloſſary to them; but he would not undertake it.

To ſum up the Whole of this long Article: The Hiſtorians are agreed, that there was a threefold Diviſion of Laws, out of which, and other Laws then extant, *Edw.* Confeſſor (*q*) made his Collection of Laws, which are called the *Confeſſor's Laws*, and which were afterwards confirmed by *William* I. and make one **Common Law** (*r*). The Word (*s*) Laga frequently occurs in the *Engliſh-Saxon-Laws*, by itſelf and in Compoſition, and does not ſeem to labour under ſuch a forced or unnatural Conſtruction, as the Biſhop contends for. Scarce any one Voucher I have produced looks favourably for his Opinion. Dr. *Wilkins*, notwithſtanding the Honour done him in the Epiſtolary Diſſertation, prefixed to his *Anglo-Saxon-Laws*, abides by the common received Signification of the Word Laga. The preſent Sir *John Forteſcue* takes Notice of the threefold Law, *Dane-Laga*, *Saxon-Laga*, and *Mercene-Laga*, that they were diſtinct Laws ſeverally obſerved in ſeveral Places; in the ſame Manner as the *Civil Law* is not the ſame univerſally, but different Cuſtoms obtain in different Places (*t*). Common Law.

The Want of two or three Books obliged me to apply to a very ingenious Gentleman (*), whom I deſire to mention with a great deal of Honour and Gratitude, as he has been always pleaſed to diſtinguiſh me with an intimate Friendſhip: The Information he tranſmitted me is contained in the two following Letters, which he dates from his Seat at *Catchfrench*, *Cornwall*.

SIR,

IF either you have never ſeen, or have forgot the Manner of printing the *Decem Scriptores* (ſo they are called from thoſe mentioned in the Title Page, though there are a few ſmall ones more in the Body of the Book), it is fit I tell you they are printed in Columns, by which too the Numbers go, and not by Pages, Mr. Glanvill's firſt Letter upon the Word Laga.

(*p*) V. Mrs. *Elſtob*. Pref. vi. xlix. Hom. p. 4. N. 19. N. 20. N. Append. pp. 29,30. (*q*) *Spelm.* Reliq. p. 32. (*r*) Ib. 37, 49. (*s*) V. *Spelm.* Reliq. Icenia, p. 154. (*t*) *Fort.* Mon. Pref. XXIII. Pref. to *Wood's* Inſt. I. L. *Seld.* of Tithes, The *Review*, 4° *Lond.* 1618, 479.-481, 491. * *John Glanvill*, Eſq;

except

except only the first Ten. To these Columns, and to the Lines in them, where it occurs, *Somner* refers every Word he gloſſes on, without Mention of the Author. There are ſix Pages prefixed to *Simeon Dunelmenſis*, which are not number'd either by Pages or Columns; perhaps, becauſe they are wanting in one MS. of his Hiſtories, or rather of one of his Hiſtories, and ſo it might be reckoned uncertain, whether they were his or no. They contain his Apology, Preface, the Number and Contents of the Chapters of the four Books of his Hiſtory of the Church of *Durham*, the Genealogies and Succeſſions of ſome Kings, and ſome little Account of *England* and its Diviſions, which I ſhall make uſe of to your Purpoſe; and therefore I have made mention of theſe Additions. Theſe Things being, perhaps, needleſly premiſed, I come to the Buſineſs.

Somner, in his Gloſſary, interprets Laȝa (*u*), by *Lex*, from the *Saxon* laȝ, nobis hodiè **Law**, *g* in *w*, ut ſæpè, mutato. Hinc Weſt-Saxena-Laȝa, Dene-Laȝa, Merchena-Laȝa, i. e. *Weſt-Saxonum*, *Danorum*, & *Merciorum* Lex; about which he ſends us to *Spelman*, *Selden*, and *Lambard*'s Archaionomia.

I do not cite the Paſſages in the Body of the Book, which are in a Charter of *Hen.* I. becauſe that Charter is not only in the Beginning of that King's Laws, in *Wheloc*'s Edition of *Lambard*; but alſo in *Matthew Paris*, whom, you ſay, you have thoroughly conſulted, and where doubtleſs you have obſerved, that *Laga regis Edwardi* can mean nothing but the Law of King *Edward*.

Again, "Omnis emat ſibi *Lagam* 12 Oris (*x*). Omnis Monetarius, "qui infamis ſit, redimat ſibi *Lagam* 12 Oris, i.e. *adlegiet* ſe, h. e. "tali pretio *Legis* compotem ſe reddat, idoneum ſc. Qui ad pur- "gationem *legitimam* admittatur, etiamſi fuerit infamis." The Paſſages cited are amongſt the Laws of *Ethelred*, in the Body of the Book, but are not amongſt *Lambard*'s Laws; I ſuppoſe, as not being to be found in the *Saxon* Language.

Lagedayum (*y*). Idem quod nobis **Law-Day**, *Dies* ſc. *Juridicus*, à *Sax.* laȝa ðœȝ *dies*. The Paſſage referr'd to, is in a Deed of Exchange, Temp. *Ed.* 1. and the Words theſe: "Cum omnibus Sectis "*Lagedayorum* quæ Prior de *Ledes*, & omnes alii eorum tenentes "debuerunt ad *Laghedaya* mea de *Newenton*."

In the old Gloſſary added by *Wheloc* at the End of his Edition of *Lambard*'s Laws, there is *Unlaga*, non lex. Accordingly, in the Laws of *Canute* (*z*), Law 34. (in *Lambard* 'tis the 14th of the Temporal Laws), we find, Si quis *unlage*, i. e. *Legem* non erigat, vel injuſtum judicium judicet, *&c.* or according to *Lambard*'s more elegant Tranſlation, Si quis contra quam fas eſt, *Leges* adminiſtrârit, *&c.* The Word in his *Saxon* Law is Unlaȝe.

In the ſame Gloſſary, Utlaȝa, ſine lege; and we all know the vulgar Meaning of *Utlagatus* (*a*).

I think you ſaid you had peruſed *Somner's Dictionarium Saxonicum*, ſo I ſhall juſt take Notice, that there, in the Edition 1659. he agrees to the ſame Interpretation he made in the Edition 1652. only, inſtead of Laȝ in the Gloſſary he makes the *Saxon* Word for *Lex* in the Dictionary Laȝa. Perhaps, by the by, there is an Error of the Preſs, and that it ſhould be Laȝe, to preſerve it a Monoſyl-

(*u*) X *Scriptt.* col. 311, 51, 61. (*x*) Ib. c. 896, 34. 897, 5. (*y*) Ib. c. 1927, 46, 48.
(*z*) Ib. c. 924, 1. (*a*) F. N. B. 161. *a*.

lable; and from a Monoſyllable our preſent Word **Law** was ſurely formed: The Lord *Coke* (*b*) accordingly has the Word *Lageman*. Lah, ſays *Somner* a little afterwards, idem quod Laza; which I mention, becauſe I take *Lah*, *Lage*, or *Lag*, though a little differing in Spelling to have been the ſame in Sound, the *g* being pronounced with an *Aſpiration*, as if it had been *gh*; and ſo *Danelagh* is expreſly written in Biſhop *Fleetwood*'s *Chronicon Pretioſum* (*c*), in a Tranſlation of a *Latin* Law of *W.* the Conqueror, Law the 4th. And ſo much for the Word Laza.

For the other Matter in the preliminary Additions to *Simeon Dunelmenſis*, the Column immediately preceding p. 1. it is ſaid that *England* had thirty-two Shires beſides *Cumberland* and *Cornwall*; that theſe thirty-two Shires were divided *per tres Leges*, Wertrexenalaza, Deneleza, (laza ſurely it ſhould be) and Menchenelaza. Wertrexenalaza *habet* 9 Sciras (naming them from *Kent* to *Devonſhire*, with *Somerſetſhire*, *Wiltſhire*, and *Berkſhire*); Denelaza *habet* 15 Sciras, naming them; Menchenalaza *habet* 8 Sciras, *Herefordſhire*, *Glouceſterſhire*, *Worceſterſhire*, *Shropſhire*, *Cheſhire*, *Staffordſhire*, *Warwickſhire* and *Oxfordſhire*. I enumerate them, that you may know the 15 that belonged to the Denelaza, (as to which I muſt tell you,) that *Rutland* is not reckoned as a Shire; perhaps, in old Time it was Part of another, and that *Yorkſhire* being the only one named of the northern ones, it ſeems that *Lancaſhire*, *Weſtmorland*, *Durham*, and *Northumberland* were included in it. I alſo name them for the ſake of a Conjecture, as I think, of my own; for finding that all the Shires that border upon *Wales*, where the greateſt Numbers and Power of the *Britains* were, belonged to the *Mercians*; I ſuppoſe the Name of *Mercia* might ariſe from its being a *Bound* or *Mark* againſt them, and not from its being on the Confines of, and bordering upon all the other Kingdoms or Provinces, for that is not ſtrictly true; for in its utmoſt Extent it never touched, or was Neighbour to the Kingdom of *Kent*.

To the ſame Purpoſe writes *Jo. Brompton* (*d*), both as to the Number and Names of the Laws, and the reſpective Shires where they ſeverally prevailed; only he does not exclude *Cumberland*, which he calls *Carleyrſhire*, but compriſes that in *Eboracſhire* (now *Yorkſhire*), as containing all the territory quite home to *Tweed*, afterwards divided into ſix Counties, as at preſent, making by that means 37 Counties (without *Cornwal*) inſtead of 32, without or before ſuch Diviſion. He adds (*e*), "De ſupradictis *tribus legibus*, "viz. Menchenalaza, Wertrexenelaza, & Danelaza. Iſte rex *Ed*- "*wardus* tertius (the Confeſſor) *unam legem communem* edidit, quæ "Leges *Edwardi* uſque hodiè vocantur." Which, by the Way, helps us to the original Meaning of the Phraſe **Common Law**, (and different from that in which it is now taken) which was therefore called *Common*, becauſe it extended to all *England*; whereas before, *different* Parts had been ruled by *different* Laws *. Common Law.

I am, &c.

Auguſt, 1730.

JOHN GLANVIL.

(*b*) 1 Inſt. 58. *a*. (*c*) Cap. 3. p. 31. (*d*) X *Scriptt.* c. 956. (*e*) Ib. c. 957.

* V. *Lambard*'s Chorography of the Heptarchy prefixed to his *Archæon*.

SIR,

Mr. Glanvill's ſecond Letter.

I Have Your's of *Sept.* 28. I had not then done any Thing farther as to what you deſired of me; but I now ſet about it. But before I proceed, I muſt ſay, I think Mr. *B.* lays too much Streſs upon the Word *habet*. We are not to expect Propriety of *Latin* in Writers of that Age, nor to expound them by it. I know not whether I tranſcrib'd what went before in my former Paper; becauſe having, I think, cited *Jo. Brompton* firſt, I might be ſhorter as to the preliminary Additions to *Simeon Dunelmenſis*, which I ſaid were to the ſame Purpoſe. The whole Paſſage is thus: "Anglia "*habet* 32 Sciras extra *Cumberland* & *Cornwalas*; ſunt hæ 32 Sciræ "diviſæ per tres *Leges*, (did ever *Lex* ſignify a Diſtrict?) Wertrexe-"nalaga, Denelaga & Mencheneleza. Wertrexenelaga *habet* 9 Sci-"ras," and ſo on; that is, the *Weſt-Saxon-Law* poſſeſſes, governs or prevails in nine Shires. I own I take this and the parallel Place in *Brompton* to be two pretty full Teſtimonies in Favour of all thoſe who think Laga ſignifies **Law**, as well in Compoſition as by itſelf. But to go on.

Lambard in the Gloſſary to his *Archaionomia*, which interprets *Latin* by the *Saxon*, and not *Saxon* by the *Latin*, ſays thus: Jus *Dacorum*, *Occidentalium Saxonum*, & *Merciorum*; Saxonicè, Denelaga, Wertreaxnalaga, ⁊ Mynchalaga; and, a little lower, in the ſame Article or Paragraph, ſpeaking of the differing and moſt prevailing Laws of the *Weſt-Saxons* and *Mercians*, he adds, "Utriuſ-"que autem populi *Lex* uno interdum nomine *Jus Anglorum* vo-"catur;" probably with regard and in Contradiſtinction to the *Daniſh* Law, and doubtleſs, after *Egbert*'s uniting the ſeven Kingdoms in one, and calling the whole Country *England*. And then, in his Chorography of the Heptarchy, having laid down the Extent of the ſeveral Kingdoms, and what Counties they contained (aſſigning therein much the largeſt Number to the *Mercians*) he proceeds to the Laws, and having ſaid, that the Law of the *Weſt-Saxons* was the Law of themſelves, the *South-Saxons* and *Kent*; the Law of the *Danes*, that of the *Eaſt-Saxons*, *Eaſt-Angles* and *Northumbrians*; He ſubjoins, "habebant quidem & *Mercii* ſuam Autono-"miam, verum an in tota *Merciorum* regione non affirmaverim. "Habeo etenim authores qui *Orientales* & *Septentrionales Mercio-"rum* fines *Dacorum* Legibus contineri tradunt." And Authors, ancient Authors, though not then printed, we ſee, he might have; if Denelaga ſignify the *Daniſh* Law, for *Brompton* and the other mentioned in my former Paper, give the *Mercians* Part of *Hertfordſhire*, *Bedfordſhire*, *Buckinghamſhire*, *Huntingdonſhire*, *Northamptonſhire*, *Leiceſterſhire*, *Nottinghamſhire*, *Derbyſhire* and *Lincolnſhire* to Denelaga. But, if we ſuppoſe that Denelaga ſignifies a Diſtrict, then muſt the *Mercian* Kingdom be leſſened at leaſt half in half, and the *Danes* have Territories which they never were Maſters of, 'till *Canute* was King of the whole Country, or at leaſt till the Diviſion of it by Agreement between him and *Edmund Ironſide*. Though long before, at ſeveral Times, they not only made Depredations and Incurſions, but gained ſome ſcattered Settlements amongſt the *Mercians*, as well as in other Places. And

Godwin had the *Eaſt-Angles* (Eaſt-Angliæ *rex* (*f*) entire, which Kingdom yet was taken from him by *Edward* the Son and Succeſſor of *Alfred*.

I think it worth obſerving (not knowing whether it has ever been obſerved,) that the Werꝛexenalaȝa, Meɲcnalaȝa, and Denelaȝa, are the only particular *Lagas* that, as far as I find, Mention is made of; and this is no Wonder, but very natural and proper, if the *Weſt-Saxon Law*, the *Mercian Law* and the *Daniſh Law* are meant by them, and the ſeven Kingdoms, or the whole Nation were governed by theſe three Laws: But if by thoſe Words, ſo many ſeveral Diſtricts only are to be underſtood, why ſhould we not meet with a Suꝺhꝛexnalaȝa, Eaſtꝛexnalaȝa, and ſo on? Upon the Whole, if Laȝa in Compoſition muſt at any Time, and in any Author, ſignify a Diſtrict, it ſeems that it does it relatively to Law, the original Meaning of the Word, *viz.* a Diſtrict ruled by ſuch or ſuch a Law. And it is not impoſſible, or very improbable, but from ſignifying *Law* at firſt, it may have been carried on to ſignify farther the Territories wherein thoſe Laws had Authority.

I have run over the old Laws as found in *Brompton*, where the *Saxon* Words, or *Latin* ones formed from them, are every where met with, and have compared them with *Lambard*, and his Verſion made rather as to the Senſe (as he underſtood it) than the Words, the Explication of which he leaves to his Gloſſary.

In the fœderal Laws between *Alfred* (and renewed by his Son *Edward*) and *Godwin* the *Dane*, which in *Brompton* are placed amongſt the Laws of *Alfred* (*g*), and by *Lambard* amongſt thoſe of *Edward* (*h*), in many of the Articles we find it ordered, that the Tranſgreſſor of the Law Reddat Laſhſlite cum *Dacis*, Witam cum *Anglis*; and the ſame occurs in the Laws of *Canute*. Which I mention only becauſe it ſeems to confirm *Lambard*'s Obſervation, mentioned before, that the *Mercian* and *Weſt-Saxon Laws* went ſometimes by the common Name of the **Engliſh Law**, that is, when they probably agreed with each other in Oppoſition to the *Daniſh*; and the Concern was not between *Mercians* and *Weſt-Saxons*, but all that were *Engliſh*, and the *Danes*.

In the Laws of *Athelſtane* Ceorles Weregild (*i*), 267. (falſe printed, I believe, for 266.) Thrimſa betham: Denalaga (*k*), Ceorles Weregild is 266. Thrimſa, h. e. 200 Scillings on Mercnaland. And as here the *Mercian* Territory is undoubtedly meant, the natural Inference is, that Meɲcnalaȝa muſt ſignify ſomething elſe. The *Latin* of this Law in *Brompton* (*l*) is, Ceorles Weregildum eſt 266 Thrimſa, i. e. 200 Solid. ſecundum *Lagam Mercenorum*; and below (*m*) it is in *Mercenorum Laga*. Bp. *Fleetwood* (*n*) mentions a like Law cited by Dr. *Hickes* in Diſſertat. Epiſtol. from the Textus *Roffenſis*; Ceorles Weregild is *Mercnalage* 200 Scill. &c. The *Engliſh* of which, ſays the Biſhop, is that a Churl's Weregild is 200 *ſ.* by the *Mercian* Law. So that the Biſhop muſt be added to the Number of thoſe who underſtand Laȝe in Compoſition to mean **Law**. And if Dr. *Hickes* has tranſlated it accordingly in *Latin*, ſo is he too.

(*f*) *Brompt.* X Scriptt. c. 828. (*g*) Ib. c. 829. — 831. (*h*) *Archæon.* p. 41. & ſeqq.
(*i*) Ib. p. 55. (*k*) Ib. p. 56. (*l*) X Script. c. 845. 6. 1. (*m*) Ib. l. 16.
(*n*) Chron. Prec. p. 27.

Again,

Again (*o*), *Angli* ſacerdotes æque ac Thani jusjurandum æſtimant. The *Saxon* is, On Enzlalaza bith zehic; in our *Engliſh*, be alike valued. *Brompton*'s Tranſlation accordingly (*p*) is, Miſſæ Presbyteri (*Maſs Prieſts*) & ſeculares Thani jusjurandum in *Anglorum Laga* reputatur æque Carum.

Amongſt the Laws of *Edmund*, we find this (*q*), Sapientum eſt ſedare factionem, imprimis juxta populi *Lagam* debet prælocutor occiſoris, &c. The *Saxon* for populi *Laga* is, **Fokerigbt** (*r*).

The Title of *Ethelred*'s Laws is thus (*s*). Hoc eſt concilium quod *Ethelredus* rex & ſui ſapientes condixerunt ad emendationem & augmentum pacis. Omni populo apud Wodeſtocam in *Mircena Landa*, i. e. *Terra Mircenorum* poſt *Angliæ Lagam*. On Myncena-Land æfter Ænzla Laze is the *Saxon* in *Lambard* (*t*), where Laze is ſufficiently diſtinguiſh'd from Land, and can mean nothing but **Law**.

In *Canute*'s Laws (*u*), Law the 2d, Capitalis Eccleſiæ pacis infractio eſt ut regiæ pacis infractio 10 libris (in the *Saxon* 'tis **fif**, five, pundum) in *Anglorum Laga*, on Enzlalaze.

Hæc ſunt jura quæ rex habet ſuper omnes homines in *Mircenis* & *Weſt-Saxia*, and ſo goes on to ſpecify the Rights (*x*). In the *Saxon* Law (*y*), 'tis, on Wertreaxon & Myncean.

In Denelaza (in the *Saxon* Law (*z*), 'tis alſo on Denelaza) habet rex, and ſo on, declaring his Rights amongſt the *Danes*. Here conſidering the Contradiſtinction, Denelaza may ſeem to ſignify a *Diſtrict*, or more properly thoſe *Provinces* where the *Daniſh Law* was in Force. Accordingly, *Lambard* tranſlates it, In iis autem quæ jure *Dacorum* reguntur regionibus, &c.

Si quis Hamſocnam faciat 5 libras regi emendet in *Anglorum Laga*, in *Denelaga* ſicut lex ſtetit antea (*a*). *Lambard*'s Verſion of this Law is, " Si quis alterius in domum invaſerit, pendito quidem " regi *jure Anglorum* (on Enzlalaze) libras quinque." In *Dacis* ſi fuerit, eſto pro eorum conſuetudine compenſatio. *Saxon.* On Denelaze ſpa hit æfterbe (*b*).

I am, &c.

Octob. 1730.

JOHN GLANVIL.

P. S. I have nothing to add to what I have writ above, but that, if Bp. *Nicholſon*'s Verſion of On Mencnaland æfter Ænzlalaze be right, it would follow, as it ſeems, that only *Mercia* was afterwards the *Ditio Anglorum*, whereas ſurely *Weſt-Saxia* was ſo too, and ſo were *South* and *Eaſt-Saxia* and *Kent*; to ſay nothing of the *Eſt-Angles* and *Northumbrians* in *Ethelred*'s Time, when the *Danes* ſeem rather to have lived diſperſedly, or in ſome Cities aſſigned them by *Edward* Son of *Alfred*, than in any continued Province of their own.

J. G.

(*o*) *Lambard*, p. 56. (*p*) X Scriptt. c. 846, 28, 9. (*q*) Ib. c. 861, 31. (*r*) *Lambard*, p. 59, 7. (*s*) X Scriptt. c. 893, 4. (*t*) p. 88. (*u*) X Script. 918, 50, 52. *Sax.* L. 3. p. 98. (*x*) X Scriptt. c. 923, 51, & ſeqq. (*y*) *Sax.* L. 12, 13. p. 109,10. (*z*) L. 14. p. 110. (*a*) X Scriptt. c. 929, 10, 11. (*b*) *Lamb.* p. 121. L. 59.

Chap. XXXIV. N. 22. Mr. *Selden* has a Note at the Maxim, *Quod principi placuit legis habet vigorem*, and I have enlarged upon the Subject: After a further Enquiry I have met with the Orations of *J. Fred. Gronovius* and Mr. *Noodt*, (a celebrated Civilian,) upon the *Lex Regia*, tranſlated into *French*, with Notes, by Mr. *Barbeyrac*: I have read them with a great deal of Pleaſure and Information; alſo the latter, as abridged by Mr. *Le Clerc* (*c*), and I thought it might not be unacceptable to the Reader, to tranſlate, and make it a Part of my Preface.

Oration of Mr. Noodt upon the Lex Regia.

An Oration made by Mr. *Noodt*, *A. D.* 1699. when he laid down the Office of Rector of the Univerſity of *Leiden*, upon the *Right of Sovereigns*, and the *Lex Regia* (*d*), wherein the Author propoſes to himſelf to confute the Opinion of thoſe, who are fond of imagining, that the *Sovereign Power* is above all Laws, and that the Prince is reſponſible for his Conduct, and the Exerciſe of his Government, to none but God, let him do what he will. A great many People carry it ſo far, that they are even of the Opinion, that the *Romans* had given up into the Hands of their Emperors an unlimited Power; and they ground this Opinion upon ſome Expreſſions of *Ulpian*, which they explain accordingly. Mr. *Noodt* makes it to appear that ſuch Sentiments are contrary both to good Senſe, and alſo to the Behaviour and Uſage of the *Roman* People.

I. To begin with the general Reaſons, in Oppoſition to this Opinion: It is certain, that the Names of *Maſter* and *Slave*, of the *Sovereign* and the *Subject*, are unknown in Nature. All Men naturally are upon a Foot of Equality, free and independent one of another: In Conſequence, every particular Perſon is equally bent upon his own Preſervation, and has an equal Authority to purſue his own Good: But, although Nature has given this Right to every particular Perſon, ſhe has not thereby given ſuch a particular Perſon or Perſons any Authority to do Miſchief; in order to hinder them from abuſing that Strength of Body Nature has endued them with, which they have in common with the Brute Creation; ſhe has given them Reaſon, by means whereof they may compare and ſet together the paſt, preſent and to come; by the ſame Means they become enabled to diſtinguiſh that which is of a long Duration from that which is not ſo long, to prefer a greater Good to a leſs, and to diſcern, in Reality, what is profitable, from what is only ſo in Appearance.

Men being thus diſpoſed and qualified, it was natural that the Sexes ſhould unite, and that they ſhould earneſtly deſire the Society one of the other; whether to avoid the Tedioufneſs of Solitude, whether to find in the mutual Supports which the one renders to the other, ſome Advantages, which they could not otherwiſe be capable of, or enjoy in the ſolitary Life; whether to reſiſt thoſe who would otherwiſe impoſe upon them, and abuſe their Strength with a View of doing Miſchief to others. Beſides all this, Reaſon, not content to have inclined Men for Society, hath made them ſenſible that they ought to make the ſocial Life firm and durable; ſo that it may not be eaſily interrupted and broken, and fall back every Moment

(*c*) *Bibl. Choiſie* To. VII. 228, 254.

(*d*) V. *Wood*'s Inſt. I. L. p. 7.

into the ſame Inconveniences, which they muſt have met with in a State of Solitude: In order to this, ſhe hath made them comprehend, that in living conformably to their natural Conſtitutions of Body and Mind they ſhould preſerve this Society entire.

One may look upon what Reaſon dictates to us in this Reſpect as a *Divine Law*; ſince there can be no Diſpute, but that what *wills* that one ſhould aim at a certain End, *wills* alſo the proper Means ſhould be employ'd, without which it is impoſſible to attain to the End propoſed. God Almighty having propoſed it to himſelf to do Good to Mankind, and to make them to live happy here in this World, except they ſhould become unhappy through their own Fault, hath in Conſequence *willed*, that they ſhould live in Society, and that they ſhould do all that becomes them, in order to keep this Society together.

Beſides, one may conſider the ſame Thing in another View. It being certain, that Man is naturally free, and may uſe his Limbs, and all that he hath for his own Preſervation, and alſo for the Preſervation of any other Perſon for whom he is concerned, he has a Right to repel an unjuſt Force, which endeavours to hurt him, and to puniſh the Evil they might have done him; not merely from the Pleaſure of Revenge, and making Repriſals; but by Way of Example, which may ſerve to be a Check, that they ſhould not be guilty in the ſame Kind another Time: But it is contrary to Nature, that any one Man out of Picque, Fancy, or any other unreaſonable Motive, ſhould hurt another who derives from the *ſame Original* with himſelf, who enjoys the *ſame Reaſon*, who is *equally* ſenſible of *Good* and *Evil* with himſelf; ſince no one would be willing to be treated ſo by others; and that it is moſt certain, that Mankind would be very miſerable, if Men were to do Miſchief one to another without having Regard to any Reaſons to the contrary.

This being conſidered, it ought to have eſtabliſhed a perpetual Peace amongſt Men, even though every particular Family were to live by themſelves; without forming a more extended Society with others. But we know by Experience, that if every Perſon ſhould behave towards others according to his own Caprice and Humour, there would be no ſuch Thing as *Reſt*, *Peace*, nor *Liberty* in the World. *Ambition*, *Avarice*, a *Love of Pleaſures*, all which blind the Minds of moſt Men, would ſtir up among them *Troubles*, *Quarrels* and *Wars* without End. Beſides, each Man being his own Judge and Avenger of Wrongs done him, or which he ſhould imagine to have received from another, *Paſſion* and *Self-love* would make him go beyond all bounds of Juſtice. To avoid theſe Inconveniencies, Men have formed themſelves into Societies, in which each particular might be capable of enjoying his *Liberty*, upon this Condition, that he ſhould not prejudice that of another Perſon: For this Reaſon, they have reunited all their Strength to preſerve, by a *joint Authority*, the one to the other, what they had, and alſo for *mutual Defenſe* by the *combined Force* of the whole Society.

Further, Men ſeeing it impoſſible, that thoſe who form the Society can aſſemble themſelves, at all Events, in an Inſtant, whether to defend the Society in general, whether to ſupport, maintain and defend the Rights of any particular Member of the Society, and to puniſh thoſe who had done any Injury, either to particular Perſons,

or to the Society, thought it neceſſary and incumbent upon them to make Choice of ſome *one Perſon* of *approved Virtue*, who might give the neceſſary Orders for the Defence of the Society, and who might do Juſtice to particular Perſons *impartially* without *Prejudice* or *Paſſion*. In order to enable him to act in ſuch a Capacity, every Member of the Society has conferr'd upon *him* all that *united* Force and Power, which each had before in his own Perſon.

From this it appears, that to acknowledge any one Perſon as the *Sovereign*, is not a Thing preſcribed by Nature, as is that of living with one another, according to the Rules of Juſtice. Men being *naturally free*, and Judges of their own Conveniencies and Advantages, *voluntarily* eſtabliſhed the *Sovereign Power*. Although by this Eſtabliſhment, each particular Member hath ceaſed to be the Defender of his own Liberty, and that he hath it not in his Power to *will* any Thing but what the *ſupreme Power* hath judged to be for his Advantage, and for the Common Good: Nevertheleſs, this Power was not eſtabliſhed to ruin and deſtroy, but to preſerve and defend the Common-Wealth. We are not ſubjected to his Caprice and Humours, let them be what they will, but we have entruſted all to the *Good Faith* and *Equity* of the *Sovereign*. Can one imagine, that People who had common Senſe, and who have thus formed themſelves into Society, with the Care of which they have charged and entruſted the *Sovereign Power*, in order to preſerve the quiet Enjoyment of ſuch Goods as Nature had given them, ſhould arrive to ſuch an Exceſs of Folly, that when once the Society has been formed, they ſhould take it into their Heads entirely to overthrow the Ends, for which they eſtabliſhed it? Can any one believe, that they have given up to the *Sovereign* all that was good and worth enjoying, whilſt in the State of Nature, and afterwards to be governed, like the Brute Creation, which do not live for themſelves, but are paſtured, ſhorn, killed and eaten by Mankind, as they ſee beſt and moſt convenient.

It is therefore evident, that each Man gave himſelf up to be governed by *one Sovereign Power*, not merely for the Sake of that Power, but to enjoy his natural Advantages under its Protection. If it be asked, What is the Extent of the *Sovereign Power?* the Anſwer is eaſy, in one Word, that it is not more nor leſs than the *Public Good*; and that if it go beyond theſe Bounds, it does no more *that* for which it was at firſt formed and eſtabliſhed.

If it makes Uſe of its Power for the Ruin of Society, each one is at his Liberty to aſſert his *natural Right*, he is not obliged any more to refer himſelf and his Caſe to the Conſent of the People. It is of no Conſequence, whether in Caſe of Oppreſſion the Prince and the Subject have made, or have not made a mutual Contract, whether or no ſuch a Contract be ſubſiſting, the Subject is equally at Liberty to reſiſt Oppreſſion. Becauſe at the Bottom, there is no Prince but who holds his *Original Right* from the People, which can't be in Subjection to any one, whoſoever he be, but by their own Conſent; and the Prince was never inveſted with any Power, but for the Preſervation of the People conſenting and contracting.

This will be granted, perhaps, with reſpect to Princes, who become ſo upon certain Conditions: But it will be ſaid, that this Liberty

berty has not Place, with reſpect to thoſe from whom the People have exacted no ſuch Promiſe. It is very true, ſome ſuch Power may be lodged in the Hands of ſome Princes, very imprudently! But ſtill it is certain, that the People confided in the Juſtice and Moderation of ſuch a Prince, upon a Suppoſition, that he could not be but ſenſible wherefore the People promoted him to ſuch an advanced Station, and that ſuch a Prince would, of his own Accord, obſerve the tacit Conditions, upon which his Eſtabliſhment was *originally* founded; and not that the People were to be governed at mere Will and Pleaſure, without any Regard had to their *Good:* No one ever conſented to obey a Superior Power, but with a View to their own Advantage. If it anſwers the Intention of the People, it is founded in *Right*. But, if the People find themſelves miſtaken, the *Right of Superiority* and *Command* immediately ceaſes.

Though the People, in giving up the *Sovereign Authority* to any one, without Reſerve, and that he ſhould be inveſted with a Power as extenſive as poſſible; notwithſtanding, he has no more of *Right*, than each had in his private Capacity, *at the Time* when the Society was firſt entered into and formed: No one had a Right to do hurt to himſelf, nor to others, but only to procure his own Good, and that of the Publick; conſequently, the People could not convey any Right of a different Nature to the *Sovereign Power*.

It will ſtill be alledged, that the People have a Capacity of chuſing a *Lord* or a *Maſter*; ſuppoſe, for Example, that a Nation be ruined by Wars, and in ſuch a deſperate Way as not to be able to preſerve itſelf, whereby they become obliged to deliver up their Towns, Poſſeſſions, all their Rights, divine and human, into the Hands of the Conqueror, or of any other Nation, and that at Diſcretion. Suppoſe, for Argument ſake, that Famine, and a Proſpect of Starving be in the Caſe, and has reduced them to the Neceſſity of ſubmitting to another, upon Conditions ſo hard; or even that a whole Nation have concluded themſelves, becauſe that they thought they could no longer ſubſiſt but under the unlimited Command of a ſingle Man: Suppoſing all this, ſhall he who is the *Maſter*, imagine that the Goods and Lives of a whole Nation, ſo in Subjection, depend on nothing but his mere arbitrary Will and Pleaſure? There are ſome who maintain, that he may well do it, and that one may look upon ſuch a Nation, as a Nation of Slaves, over whom the *Sovereign* has all the Right, as they had over themſelves, when they enjoy'd their Liberty; and that they are obliged to obſerve the Agreement which they enter'd into with him.

But, if it can be demonſtrated, that even under ſuch an Agreement, as is above ſet down and declared, the People propoſe to themſelves their own Good: It is evident, that the *Power of the Sovereign* cannot be altogether ſo unlimited: One may carry it further, that though the People, in this State of Subjection, would have given him this Authority, it could not be done. It is a Law of Nature, that every one ſeeks his own Advantage, and flies from whatever is prejudicial to him: No one can help following her Dictates, ſince 'tis impoſſible for a Man to wiſh Harm to himſelf, conſidered as ſuch: If a Man undergo ſome Pain, 'tis in order to avoid ſomething which is worſe: The Caſe being thus, ſuppoſe any

one had obliged himſelf to ſuffer Death at his *Maſter*'s Hands; will any one ſay, that he was obliged by the Law of Nature to ſubmit to it, whenever his Maſter had a Mind to put it in Execution? It is certain, that at the Time of the Obligation enter'd into, he thought to find his Account in it; if afterwards it prove to be otherwiſe, he was taken at a Surprize: He is in no wiſe obliged to continue in an Error, in Oppoſition to the Law of Nature, which does not permit that any one ſhould wiſh harm to himſelf.

If this take Place in particular Contracts, how much more ought it to be admitted in Contracts of a Publick Nature: In the former there are but a few Perſons intereſted, and but a few can ſuffer; but a publick Treaty or Contract reſpects a whole Nation, the Preſervation of which is of much more Conſequence. Further, it is to be obſerved, that the Right of a whole Nation is made up of an Union of the Rights which every particular Perſon who compoſes it had in and of himſelf; and if no particular Perſon has a Right to procure his own Harm, neither can a whole Nation have any ſuch Right.

But it is objected to what has been ſaid, that, if any particular Perſon has a Right to depart from and ſell his own Liberty, the People, in a collective Body, may do the ſame Thing. This Objection carries no Weight with it; the Queſtion is not, whether he who has acted ſuch a Part ought to be in Bondage: But, if a particular Perſon, or a Number of People, who are reduced to ſuch an Extremity, can't be reſtored to their Liberty, when he, to whom it has been diſpoſed of, violates either through Cruelty or Madneſs, all the Laws of Humanity. It will be ſaid doubtleſs, that a *Slave* ought to ſuffer every Thing, and that it is but a Conſequence of the Loſs of his Liberty, he being an Appurtenant to his *Lord*, in the ſame Manner, as his Ox or Sheep, and the Maſter may do with his own Goods what he pleaſes. But it is not the ſame with a Man, ſuch a pretended Right over him is downright Madneſs, proceeding rather from the Pride and Cruelty of Mankind, than from any Right; becauſe it is in an entire Oppoſition to all natural Right.

This will appear more clearly, if you conſider the *Slave* and the *Maſter*: It is falſe in Fact, that one Man may be looked upon by another Man as his Beaſt, which he is at Liberty to kill when he pleaſes. According to Nature, a *Slave* is a Man as well as his *Maſter*. He's a Slave through Misfortune, and this happens different Ways; by Fortune of War, or in Conſequence of ſome Agreement: With reſpect to *him* whom the Fortune of War has reduced to a State of Slavery, the Right of War ought to be obſerved towards him, which ſtill remains in full Force with reſpect to the Perſon who is taken Priſoner. There's no Truſt placed in him, 'tis for this Reaſon that he's kept bound or under Reſtraint. This Kind of Slave is under no Obligation to his Maſter in Virtue of any Treaty: They are, one in reſpect to the other, in a State of Nature, Judges and Revengers of the Injury done on either Side (*e*). If his *Maſter* pleaſes, he may keep him cloſe confined, or kill him, according to the Right of War: On the other Side, the *Captive* or *Slave* may ſave himſelf by Flight, or by Force, as Opportunity offers.

(*e*) *Burnet* Ref. II. p. 100.

But if a Man become a Slave not by the Effect of Violence, but in Conſequence of Parole given; whether he ſold himſelf voluntarily, or that he entered into a Promiſe to become a *Slave*, provided he might be indemnified as to his Life; by this his Act he had in no wiſe Regard to the ſole Intereſt of his *Maſter*, but he had an Eye alſo to his own Advantage in the Caſe, upon the Foot of the Agreement which he made, or ſtipulated for the Preſervation of his Life, and for that Service which he has promiſed to do for his *Maſter*; who on his Part has promiſed him his Life, provided he will ſerve him: So that, in the Caſe put, the Obligation is reciprocal, or founded on the Law of Nations. But, if the *Maſter*, without any regard to the Agreement made, behaves ſo that Life proves rather a Puniſhment, even worſe than Death itſelf, he's diſcharged from all the Obligation, becauſe he became engaged on no other Terms, but for his (*f*) Advantage, and not to be in a worſe State, than that in which he was before. He being thus reſtored to his natural Right, may ſave himſelf, and procure a Deliverance, even by the Death of his Maſter, who, by ſuch his Behaviour becomes his Enemy, rather than his Maſter and Protector.

If we conſider the *Maſter*, there is in his Behaviour ſomewhat of Madneſs, to be the Death of his own *Slave*, whom he looks upon as his proper Goods. There is no one Law to juſtify his Conduct, he acts apparently in Contradiction to all common Senſe, when he deprives himſelf of what may be ſerviceable to him. This is what is to be learnt from the *Civil Law*, in certain Inſtances. For Example, the *Laws of the* XII *Tables* have appointed Tutors to Pupils, and Guardians to Madmen; only by Way of Proviſion, that they ſhould not make an ill Uſe of what they are legally poſſeſſed of. 'Tis upon this Account that the (*g*) *Lex Lætoria* takes away from a Man, who is a Prodigal, the Management of his own Eſtate, and places it in the Hands of his next Relations: *Marcus Aurelius* would have it, that even all young People ſhould have Guardians ſet over them, though no particular Reaſon be aſſigned for it to the contrary; whereas the above Law ordained by *Lætorius*, did not take Place but in the Caſes of *Ideocy* and *Prodigality*; the Meaning and Intention is, that thoſe who make an ill uſe of their Eſtates, are in no wiſe authoriſed by the Laws ſo to do.

Nevertheleſs, it can't be denied, but that, according to the *Civil Law*, which obtained among the *Romans* (*h*), Maſters had the Power of Life and Death over their Slaves. But thoſe who enacted this Law, did not thereby deſign to induce the Maſters to make an ill Uſe of their Power, but in order to keep their Slaves in Fear, the Care of whom did not ſeem to be placed in any other Perſon more properly, than in thoſe whoſe greateſt Intereſt it was to chaſtiſe and preſerve them. Upon the ſame Reaſons, the Laws gave

(*f*) ——————— *Quæ bellua ruptis*
Cum ſemel effugit, reddit ſe prava catenis? (1)

(*g*) This Law made by *Lætorius*, provided that there ſhould be Overſeers appointed for thoſe who were diſtracted, or did prodigally waſte their Patrimony (2). (*h*) *Caius Juſt.* lege de his qui ſui juris vel alieni.

(1) *Hor.* Sat. L. 2. 7. 70. (2) *Godw.* Ro. Antiq. L. 3. §. 4. c. 14. *Kennett*, p. 169. V. *Cic.* de Offic. L. 3.—De Nat. Deor. L. 3.

a Power, in the ſame Extent, to *Fathers over their Children*: It was Matter of Conſequence that Children ſhould honour their Parents, and it did not appear at all likely, or hazardous, that Parents would make an ill uſe of their Authority, who commonly err on the other Side, out of an overweening Fondneſs. Nevertheleſs, ſome Exceſſes having been committed both by *Maſters* and *Parents*, Laws were made not only to moderate and reſtrain their Authority, but ſuch Laws likewiſe, which gave Slaves a Liberty to prefer their Complaints, and to oblige their Maſters to ſell them, if they were evil entreated by them. *Antonius Pius* ordained, that if any one killed his Slave without Reaſon, he was puniſhed according to the (*i*)*Cornelian Law*, the ſame as if he had killed any other Man's Slave. If it has been thought proper to uſe ſuch Precautions with reſpect to particular *Slaves*, it is very juſt that a whole Nation, in Subjection, ſhould be entitled to larger Privileges. The Cornelian Law.

II. By this it evidently appears, that the People enter into no Contract, neither do they aſſociate themſelves into Society, unleſs it tend to their *Good*: Conſequently, *Sovereign Power* was not inſtituted, but for the *Publick Weal*; and to put ſuch Laws in Execution as are beneficial to the Society. But, as an Objection to all that has been ſaid, *Ulpian* is vouched, who in his XIII Book, upon the (*k*) *Julian* and *Papian Law*, ſays in expreſs Terms, "That "the Prince is diſcharged from the Obligation of obſerving the "Laws, and that though the Empreſs do not enjoy the ſame Pri"vileges, the Prince communicates them to her. *Princeps legibus* (*l*) *ſolutus eſt, Auguſta autem licèt legibus ſoluta non eſt, Principes tamen eadem illi Privilegia tribuunt, quæ ipſi habent.* But in an Affair which concerns all Mankind, the Sentiments and Uſage of any one particular Society carry no Weight with them: Proofs ought to be drawn from the Light of Reaſon, which is common to all Men. Nevertheleſs, Mr. *Noodt* can't be prevailed on to believe, that a Lawyer ſo celebrated as *Ulpian* was, and of an Integrity ſo well known, would flatter the Emperors at the Expence of the State, in ſaying, that they were not obliged to the Obſervation of Laws. Therefore he explains him in a Manner much more rational, than Julian and Papian Law. Princeps legibus ſolutus.

(*i*) *Kennett*, 174, 5. V. *Cic.* in Piſon. pro Cluent. *Godw.* L. 3. §. 4. c. 20.

(*k*) This Law called at firſt (1) *Lex Julia de maritandis ordinibus*, preferred by *Aug. Cæſar*, A. 736. was afterwards (A. 762.) improved, inlarged and preferred in a new Bill by (2) *Papius* and *Poppæus*, the Conſuls at that Time, whence it is ſometimes called *Papia Poppæa Lex*, and generally *Julia Papia*. The Privileges of this Law were, among others, that the Magiſtrates ſhould take Precedence according to the Number of their Children, a married Man before a Bachelor. In Elections, thoſe Candidates ſhould be preferred who had the moſt numerous Offspring: Any Man might ſtand ſooner than ordinary for an Office, if he had as many Children as he wanted Years to be capable of bearing ſuch a Dignity, *jus trium Liberorum*, &c. The Penalties incurred by ſuch as in Spight of this Law lived a ſingle Life; the Chief was, that unmarried Perſons ſhould be uncapable of receiving any Legacy or Inheritance by Will, unleſs from their near Relations; and ſuch as were married, and yet had no Children, above Half an Eſtate. *Caligula*, in order to amaſs a Sum of Money, commanded that all thoſe who had bequeathed any Thing by Will to *Tiberius*, and had ſurvived him, ſhould give the ſame Legacy to him (*Caligula*). But, as he had neither Wife, nor Children; and that by an Article of the *Julian* and *Papian Law* they could not inherit to any Thing but from their near Relations, the Senate diſpenſed with his Obſervation of this Law. *Dion.* Lib. LIX. 747. C. D. Ed. *Henr. Steph.* *Barbeyrac* upon *Noodt* of the *Lex Regia*.

(*l*) Dr. *Duck* de uſu & authoritate juris, &c. p. 36. Sir *Robert Wiſeman*, p. 31. V. poſt. p. 42. N. t.

(1) *Kennett*, 180, 1. (2) V. *Dio.* LVI. 578. *Lipſ.* in *Tacit.* Ann. III. Lit. C. *Roſin.* VIII. 16. *Sueton.* in Octavio, c. 34. *Pitiſc.* in *Lex Julia & Lex Papia Poppæa.*

thoſe

thoſe who are Advocates for the arbitrary Power of Princes. His principal Opinions are reduced, and you have them as follow:

Ulpian ſays, that the Prince is not obliged to the Obſervation of the Laws. He does not mean the Laws of Nature, which are eternal and immutable, and which God has enjoined to all Mankind. Upon this Head it will be ſaid, that the Prince was obliged, with reſpect to God Almighty, to obſerve the Laws of Nature; but the People had no Right to compel him to it. But then we ought not to change the Prerogative of the Prince into an unbridled Licentiouſneſs; as if, with reſpect to Mankind, he had a Right to do as he pleaſes; and as if a *Nero*, for Example, had acted according to the Right which the Laws had given him, in committing all the Crimes, of which he was actually guilty. The Prince, on the contrary, is not to think any Thing permitted to him, but what is *good* and *honeſt*. He is the Guardian of the Laws, the Judge and Defender of the Common-wealth, which is founded upon Juſtice and Equity: And he ſhould know better than to affirm that he's allowed to do Things, which are unreaſonable and unjuſt. (*m*) *Ulpian* himſelf, in another Place, ſays, that if the Prince ſets about any publick Work, it muſt be done without any Injury to another Perſon; and if a Father makes him his (*n*) Heir, in Prejudice to his own Children, this Will muſt paſs for null, and that the Emperors have often declared it ſo.

Falcidian Law.

One may ſtill make appear, that according to the Uſage of the *Romans*, the Emperors were obliged to the Obſervation of the *Civil Laws*: This is what the *Reſcripts* of *Hadrian* and of *Alexander Severus* teſtify, touching the *Falcidian Law* (*o*). The ſame *Alexander* makes Mention elſewhere of what they called the *Lex Regia*, by which 'tis pretended that the Emperor was diſcharged from the Obſervation of the Laws, (*p*) and ſays, that the Prince had no Right to be Heir to any one, where the Will is an imperfect Will, and that this was a Thing which had been often reſolved; "For although the Law of the Empire, ſays he, has abſolved the "the Prince from the Neceſſity of obſerving the Formalities of "Law, there is nothing ſo proper and becoming the Supreme Power "as to live according to the Laws." *Licèt lex imperii ſollemnibus juris imperatorem ſolverit, nihil tamen tam propriùm imperii eſt, quàm legibus vivere.* The ſame Thing may be ſeen in a (*q*) *Reſcript* of *Theodoſius* and *Valentinian*, in which they ſhew certain Caſes, which they judge not to be allowed to them.

Nevertheleſs, they will go on and ſay, that *Ulpian* aſſerts, in general Terms, that the Prince is not obliged to obſerve the Laws. But by what Law does he claim this Exemption? The Anſwer is, by the *Lex Regia*, by which the People of *Rome* conferred upon *Auguſtus* all their Empire, and all their Power. It is nevertheleſs certain, that moſt of the Emperors, who ſucceeded *Auguſtus*, received either by one *Decree* of the Senate, or by one ſingle *Law*, which they afterwards called the *Lex Regia*, what *Auguſtus* was not inveſted with, but at ſeveral Times, and in Conſequence of ſeveral Laws. If any one reads with Attention his Life, writ by

(*m*) Lib. 2. §. 10. D. nequid in public. Loc. (*n*) Lib. 8. §. 2. D. de inoffic. Teſtam. (*o*) Lib. 4. C. ad legem *Falcidiam*. (*p*) Lib. 3. C. de Teſtamentis. (*q*) Lib. 4. C. de Legibus.

Dion Caſſius, he will not find in any Paſſage of his Hiſtory, that *Auguſtus* was exempted, all at once, from the Obſervation of the Laws. This is what *John Frederic Gronovius* has very well made out in his Oration upon the *Lex Regia*. We ought to add one Thing to what has been alledged, which has not yet been remarked. The *Decree of the Senate*, whatever it was, by which *Auguſtus* was diſpenſed from the Neceſſity of obſerving the Laws, was not the ſame with that, by which the Empire was conferred upon him. If we are to give Credit to *Dion Caſſius*, the Empire was conferred in his *ſeventh* Conſulſhip; whereas, according to the ſame Hiſtorian, he was not diſpenſed from the Obſervation of the Laws, till his *tenth* Conſulſhip; and at that Time he was not diſcharged from the Obſervation of *all* the Laws, but only with that of the (*r*) *Lex Cincia*, as appears by *Dion*'s Narration upon this and the following Conſulate of *Auguſtus*, when the Senate further diſcharged this Emperor from the Obſervation of divers other Laws. Lex Cincia.

But what entirely puts this beyond all Diſpute is, the Remains of a Fragment of the (*s*) *Lex Regia* upon a Copper Plate, which is at *Rome* in the Palace of St. *John Lateran*, whereby *Veſpaſian* is diſcharged, not from all the Laws, but only from thoſe which the Emperors, his Predeceſſors, and expreſly named therein, were diſcharged from. It is to be ſeen p. CCXLII of *Gruter*'s Inſcriptions.

What then would *Ulpian* be at, when he ſays, that the Prince is diſcharged from the Obſervation of the Laws? No other, than that he was not obliged to the Obſervation of the *Papian* and *Julian Law*. It is, at leaſt, certain that the Senate diſcharged *Caligula* from it by Name, which would not have been neceſſary, if *Auguſtus* had been diſcharged from it; and it is alſo certain that *Ulpian* has made no Mention of this Privilege of the *Roman* Emperors, but in Explication of the *Papian* and *Julian Law*. All that ſtill remains to be anſwered is, how comes it to paſs that he ſays *ſolutus Legibus*, and not *ſolutus lege*, ſince he was only treating in that Place but of *one Law*? The Reaſon is, It was uſual a-

(*r*) *Cincia Lex*, the Author *M. Cincius*, Tribune of the Commons, *A.* 549. forbidding any Perſon to accept of a Gift upon Account of judging a Cauſe: This is commonly called *Lex Muneralis* (1). The *Cincian Law* inflicts a Penalty on ſuch as pleaded Cauſes for Money (2). It was enacted by the *Cincian Law*, "That no Man ſhould take any Money or Bribe for Pleading." *Dion*, where he ſpeaks of the Reaſon why the Senate diſpenſed with *Auguſtus* from obſerving the Laws, ſays, that *Auguſtus* having promiſed to give the People a Sum of Money to be diſtributed, ſo much a Head, pretended he could not keep his Word with them, without the Approbation of the Senate: So that, to give him an Authority to make ſuch Gratuities as exceeded what was allowed by the *Lex Cincia*, the Senate exempted him from the Obſervation of the Laws (3). This Expreſſion, according to the Uſage of the *Romans*, could not mean any other than the *Lex Cincia*: *Dion*, who was a *Greek* by Nation, extended it to *all Laws* in general, whether through Ignorance or Flattery, always without Reaſon. Some will judge me bold and conceited, in daring, in an ancient Fact, and a Piece of *Roman* Hiſtory, to criticiſe upon a *Roman* Conſul, and famous Hiſtorian: I chuſe rather to contradict *Dion*, than gainſay the Truth: He himſelf owns, that the Senate, in diſpenſing with *Auguſtus* from the Obſervation of the *Lex Cincia*, uſed the Expreſſion which I have quoted. Mr. *Noodt*'s Orat. *Fr.* by Mr. *Barbeyrac*, p. 268, 9. See Mr. *Whitlock*'s Speech in Parliament, *Nov.* 1649.— Memorials of the *Eng.* Affairs from *Car.* I. to the Reſtoration. V. ib. 416. *a*. V. Moyle's Works, I. 91.

(*s*) V. *Pitiſc.* ad v. *Lex Regia*; and *Gronovius*'s Oration, N.

(1) *Liv.* L. 34, 4. *Tac.* Ann. *Cic.* ad *Att.* L. 1, 20. — de Orat. L. 2, 71. — de Sen. 4. (2) *Tac.* Ann. L. 13, 42. — L. 11, 5. — 7 *Ken.* 173. *Godw.* 234. *Pitiſc. Roſin.* (3) *Dion* p. 590, 1. Ed. *H. Steph.* — L. LIII. 582.

mong the *Romans* to expreſs themſelves in this Manner, as is to be made appear by ſeveral Paſſages in *Cicero** and *Suetonius*.

But it will ſtill be urged, that by the *Lex Regia*, the Emperors were above being called to an Account; ſo that they were not obliged to render an Account to the People of their Actions; and that their Empire extended even *over the Laws*. It is true, *Ulpian* ſays, that what the Prince thinks fitting has the Force of a Law, "(*t*) *Quod Principi placet legis vigorem habet*;" where he adds, that by the *Lex Regia*, (which eſtabliſhed the Authority of the Prince,) the People gave up into his Hands all their Empire, and all their Power: "Utpote cùm *Lege Regiâ*, quæ de imperio ejus lata eſt, "populus ei & in eum omne ſuum imperium & poteſtatem conferat." But it does by no means follow from thence, that the *Roman* People gave him a Liberty to overturn the State, and to trample under Foot all the Laws, whether they concerned the *Publick*, or *particular* Perſons. *Ulpian*'s Meaning was, and he would have himſelf to be ſo underſtood, that the Emperor made the Laws, whether it was done in the Nature of (*u*) *Reſcripts*, *Conſtitutions*, or *Edicts*. As for what remains, he does not diſcharge the Emperors from the Rules of Juſtice and Equity, which are unalterable in their Nature.

One may obſerve further, very plainly, by the Fragment of the *Lex Regia* already cited, that the People of *Rome* did not pretend, in any reſpect, to authoriſe their Emperors to do Miſchief; ſince it is declared, that they grant to *Veſpaſian* the Right and Power of doing what he ſhall judge to be advantageous for the Commonwealth, conformably to the *Majeſty* of Things *divine* and *human*, *publick* and *private*, as *Auguſtus*, *Tiberius Cæſar* and *Claudius* enjoy'd it: "Utique quæcunque ex uſu Reipublicæ, majeſtate divi-"narum, humanarum, publicarumque rerum eſſe conſebit, ei agere, "facere jus, poteſtaſque ſit, ita uti Divo *Auguſto*, *Tiberióque Julio*

* *Philipp.* 2. Edit. V. To. 2. 1072. — Orat. Select. *Delph. Cantab.* p. 421.

Lex Regia explained.

(*t*) Mr. *Noodt* (1) explains theſe Expreſſions of *Ulpian* in ſuch a Manner, as ſome have been apt to imagine, that by the *Lex Regia*, the *Roman* People were wholly deſpoiled of their Authority; ſo that they depended in and throughout upon the Will of their Emperors. *Ulpian* indeed does ſay, "That what the Prince pleaſes has the Force of a Law; for that by the *Lex Regia*, where Men-"tion is made of his Power, the People gives up to him, and reſolves in him all their own Power "and Authority." Mr. *Noodt* aſſures us, that he does not believe that the Words, *ei & in eum*, were in the *Lex Regia* at all. He's alſo of Opinion, that *Ulpian* intended no other, but that the Emperor, who had no more Right of acting in Contradiction to the Laws, than any other Magiſtrate whatſoever, received thereby, at the People's Hands, the Power of making Laws by *Reſcripts*, *Ordinances* and *Edicts*. This is what he makes appear, for that ever ſince the *Roman* Commonwealth was changed into a Monarchy, the People had ſtill the Power of chuſing divers Magiſtrates, as formerly; but with ſome Regard to the Emperor's Recommendation: They had alſo a Power of making new Laws, according to ancient Uſage; which plainly ſhews that the *Roman* People had not deſpoiled themſelves of all their Authority in every Inſtance. The Words, *ei & in eum*, ſignify, at the Bottom, the ſame Thing: 'Tis as if you ſhould ſay, *per omnia & in omnibus*; or, in *French*, en tout & par tout. Theſe Words, though they carry with them the ſame Import, yet being joined together, as here, they are more Emphatical. V. Sir *Rob. Wiſeman*, Law of Laws, 8vo *Lond.* 1686. p. 31. & ſeq.

(*u*) *Reſcript.* The Letter of the Emperor, in Anſwer to particular Perſons who enquire the Law of him. *Edict.* This the Emperor eſtabliſhes of his own Accord, that it may be generally obſerved by every Subject. *Decree.* This the Emperor pronounces upon hearing a particular Cauſe between Plaintiff and Defendant(2).

(1) *Ger. Noodt*, Obſervat. Lib. 2. 4to L. *Bat.* 1706. p. 206. *Gron.* p. 7. & not. ib. *Noodt*, p. 279. N. 2. *Le Clerc*, Bibl. choiſie, To. XI. 224. (2) *Wood*'s Inſt. I. L. p. 6. L. 2. C. de diverſ. reſcript. *Pitiſc.* ad v. *Reſcripta, Edicta. Calvin.* Lex Jurid.

" *Cæſari Auguſto, Tiberióque Claudio Cæſari Auguſto, Germanico* " *fuit.*" One ſees very well, that by it the People gave the Emperor full Power to procure the Good of the State, as he found it convenient; and not that he ſhould deſtroy it. It is well known, that Laws can't expreſs or provide for all poſſible Caſes, nor prevent every Inconvenience; that there are ſome Things profitable at one Time, which may be prejudicial at another; and that a thouſand Accidents may happen, where the Laws may want an Explanation, where the Execution of the Laws ought to be ſuſpended, where an Alteration and Amendment are neceſſary; where one ought to act with Expedition and Secrecy, and to deliberate before-hand: 'Tis for this Reaſon, that the People gave a full Power to their Emperors of acting as they ſhould think moſt convenient, and not to reduce them into a State of Slavery, and to be under a blind Submiſſion to the capricious Humours of the moſt wicked of Princes.

There have been, indeed, ſuch Perſons as *Tiberius*, *Caligula*, (*x*) *Nero*, *Commodus*, *&c.* who abuſed the Authority and Power they were inveſted with, after a moſt horrible Manner; but no one ever believed that they were authoriſed by the *Lex Regia*, to behave in ſuch a Manner. They were always looked upon as Tyrants, and not as Princes. For this Reaſon the Senate, as ſoon as they could do it with Safety, condemned *Nero* to Death, and ſent in Queſt of him, in order to puniſh him. For the ſame Reaſon, they cauſed the Name of *Domitian* to be defaced in all Publick Monuments, and demanded that the Body of *Commodus* ſhould be drawn into the *Tiber* with an Hook. If they did not ſooner oppoſe the Enormities which thoſe Emperors were guilty of, it was not becauſe they thought they could not do it, but becauſe they had not ſufficient Authority and Power to effect it with Succeſs; and leſt, whilſt they tried in vain to get rid of thoſe Tyrants, they ſhould do more Harm than Good.

(*x*) The Senate, at the Time that they declared *Nero* an Enemy of the *Roman* People, cauſed Search to be made after him, in order to puniſh him, according to Cuſtom, (*more majorum,*) (1) that is to ſay, his Head faſtened to the *Furca* (2), and whipping him under it to Death —— " Inter moras perlatos à curſore *Phaontis* codicillos præripuit, legitque ſe hoſtem à Senatu judica- " tum, & quæri; ut puniatur *more majorum*, interrogavitque quale id genus eſſet pœnæ. Et cùm " comperiſſet nudi hominis cervicem inſeri *furcæ*, corpus virgis ad necem cædi, conterritus (3). — The Caſe of Nero.

Populus, ſæpe in tyrannum inſurgens, ſolet dicere ſe non *Regem*, ſed in ſui defenſionem occidiſſe *Tyrannum*; ſic fecit *Romanus* populus occidendo *Neronem*; ſic & Senatus dixerat ſe juſtè defendiſſe, cùm *Domitianum* extinxerat: De quo (4) *Tullius*, " Occidere Tyrannum ſcelus non eſſe *populo Ro-* " *mano* viſum eſt, qui ex omnibus præclaris factis illud pulcherrimum exiſtimat (5)."

In *Romanorum* hiſtoriis erudimur qualitèr populus ille primitus ſub ſeptem regibus regale regimen experiebatur; deinde, quia *regum* inertias, luxus, & rapinas diutiùs ſufferre non poterat, *regale* excutiens jugum, *Tarquinium* eorum regem ſeptimum, ſimul & *regale regimen* proſcripſerunt. Ac ſe deinceps politico regimini ſubmittentes, ſub *Conſulibus* & *Dictatoribus*, ſenatorum-conſulto regulatis, pluſquàm quingentis annis regebantur: ſed demùm *Julius* alter ibidem conſulum ſocialis dominii impatiens, tàm *Urbis* quàm *Orbis* ſibi ſoli arripuit Monarchiam, quo ipſe extunc *regaliter* vivere arbitratus eſt, non tamen *regis* nomine, quod (6) *Romanis* exoſum fuit, voluit inſigniri, ſed *Imperatorem* nominari maluit, ut quidam conſulum appellari affectabant antea *Dictatores*: ſed eo hujus arrogantiæ causâ demum interfecto, *Octavianus*, vir manſuetiſſimus, in totius mundi Monarchiam erectus, mundum univerſum nedum *regalitèr*, ſed & *politicè*, ſenatorum conſilio gubernavit, conſimiliterque fecerunt nonnulli ſibi ſuccedentes imperatores (7).

(1) *Sueton. Nero*, c. 49. *Godw.* L. 3. §. 3. c. 3. (2) *Kennett*, p. 146. (3) *Suet. Nero*, c. 49.— *Claud.* c. 34. *Domit.* c. 11. *Eachard Rom.* Hiſt. II. 149. (4) De Offic. III. c. 4.—6. Ed. *Verb.* IV. 1315. *b.* (5) *Fort.* Opuſc. de natura legis naturæ, cap. VII. (6) *Appian.* de Bello Civili, II. 807. Ed. *Amſt. Sil. Ital.* L. 16. v. 283, 4. *Liv.* L. 27. c. 19. *Stat. Silv.* L. 4. c. 1. v. 46. *Sueton.* Cæſ. c. 79. *Cic.* de Divin. II. 54. *Sueton.* Auguſt. c. 52. *Dion*, L. 54. init. *Sueton.* Aug. c. 7. *Dion*, p. 581. B. Ed. *H. Steph. Sueton.* Aug. c. 53. *Tac.* Ann. L. 1. c. 9. (7) *Fort.* de natura legis naturæ, cap. XVI.

It

It will be objected, that by ſuch Doctrine as this, Sedition is favoured and encouraged, which deſtroys Human Society itſelf. The People are ſubject enough of themſelves to have an ill Opinion of thoſe who are their Governors; and cunning and deſigning Men can eaſily perſwade the People to revolt upon groundleſs Surmiſes. This is what is objected to the Doctrine, which makes the Subject of this Oration: But, after all, ſhall the People be never put in a Capacity, or be at Liberty to reſtrain a Prince, and by Force to oblige him to perform his Duty towards his Subjects, however wicked he prove? We can never have the Front to affirm this, conſiſtently with good Senſe, or the Practice of all Nations the moſt civiliſed, which have never ſuffered, "*for any long Time* (*y*) *together*, "*exceſſive Tyranny*." If the People ſometimes make an ill uſe of their natural Liberty, they are ſo far in the wrong; but it does not follow from thence, that they muſt give it up once for all. Princes and Magiſtrates often abuſe the Authority they are entruſted with, notwithſtanding the Meaſures which are taken to prevent that Evil. But then no one will ſay, that for this Reaſon there ought to be no ſuch Thing as a Prince or a Magiſtrate in the World.

Further, what has a Prince or a Magiſtrate to fear, who does his Duty? He's beloved and reſpected by all Mankind. If he diſcharge his Duty but tolerably well, even then the People will not be apt to revolt, but will quietly bear with ſmall Grievances: It is of the Nature of Things, that before a Redreſs is thought neceſſary, People muſt be reduced to great Extremities, before they run any Hazard in order to their Deliverance. When a Prince arrives to ſuch an Exceſs of Tyranny, as is no longer ſupportable, or that he makes great Advances towards it, one can't blame the People for looking out to their own Safety, ſince he, whoſe Province it is to take Care of the Whole, thinks of nothing but diſtreſſing and deſtroying it.

An Obſervation upon Mr. Noodt.

Thus far Mr. *Noodt*, who ſeems to underſtand the *Lex Regia* in a qualified Senſe, what it ought to have been, not what it really was in Point of Practice: How Princes ſhould demean themſelves, without entering into the Truth of the Fact: Whereas *our Author*, both in this Book, and in his Treatiſe of the Law of Nature underſtood it quite otherwiſe. He does not barely quote the Maxim diſcuſſed by Mr. *Noodt*, but is very large upon it in his *Opuſculum*. The *Civilians*, with *Ulpian* at the Head of them, have conſtrued it in the moſt abſolute Senſe; and, from them, Mr. *Wood* has explained it in his Inſtitute. Laſtly, Uſage (which is the beſt Conſtruction of a Law) has determined it accordingly: So that it is altogether unneceſſary to be particular how it ſtands at preſent, in the ſeveral States and Governments of *Europe*: *Aſia* and other Parts of the World have their *Lex Regia*; it is to be traced up as high as the Scriptures themſelves, which repreſent *Nimrod* under the Character of a (*z*) *mighty Hunter before the Lord*; and where (*a*) *Samuel* declares to the Children of *Iſrael* the Manner of the King who was to rule over them: (*b*) *Gronovius*, in his Oration,

(*y*) *Res nolunt diu malè adminiſtrari.* (*z*) *Gen.* x. 8, 9. (*a*) 1 *Sam.* viii. 10. V. *Whitby* ad *Matth.* xx. 25. p. 170. *b.* (4) *Neh.* ix. 37, & *Pat.* ad Loc. V. *Rapin*, Act. Reg. I. 40. (*b*) V. *Fabric.* Bibl. Lat. I. 807. III. 787.

treats the Subject as an Hiſtorian and an Orator; Mr. *Noodt* ſhews more of the grave Politician, or rather Philoſopher, (this laſt Oration is tranſlated into *Engliſh* from the *French* of Monſ. *Barbeyrac*, by Mr. *Savage*): They are curious Pieces, and fit to be put into the Hands of all honeſt Enquirers, who are neither Advocates for a wanton Licentiouſneſs of Power, nor for the manifold Miſeries of Anarchy.

An Account of the Name and Family of the Forteſcues.

Before I conclude this Preface, it will probably be expected that I give ſome Account of the Chancellor and his Writings, and briefly of the Name and Family of *Forteſcue*.

All Ages and Nations have had a Reſpect for worthy Men, and have preſerved what Memorials they could, which any Ways relate to them; and from whatever is remarkable and illuſtrious the Mind of Man is ſtirred up and encouraged to laudable Actions. The Comfort of Parents lies in a numerous Offspring, which does not degenerate from their Anceſtors Virtue: And that which makes Children illuſtrious, is their being deſcended from illuſtrious Parents, whoſe Wiſdom and Virtue reflect an Honour upon their Poſterity. When particular Perſons or Families conſider what Probity, Piety, Virtue and Learning ſhone forth ſo conſpicuous in a common Anceſtor, and in thoſe deſcended from him, it is natural to endeavour to emulate them; and it is a great Incentive to Good Manners to be conſcious of being deſcended from worthy Progenitors; and an ingenuous Mind will be aſhamed not to come up, in ſome Degree, to ſuch Attainments as made thoſe who went before them ſo honourable and reſpected.

The Son of (*c*) *Sirach* has ſeveral Chapters in Praiſe of famous Men, "Such as did bear Rule in Kingdoms, Men renowned for "their Power, giving Counſel by their Underſtanding, by their "Knowledge of Learning meet for the People: Wiſe and eloquent "in their Inſtructions; rich Men furniſhed with Ability: All theſe "have been honoured in their Generations, and were the Glory of "their Times —— Their Seed ſhall remain for ever, and their "Glory ſhall not be blotted out. Their Bodies are buried in "Peace, but their Name liveth for evermore. People will tell "of their Wiſdom, and the Congregation will ſhew forth their "Praiſe."

A particular Account of the Chancellor.

Wimſton.

I think it is agreed on all Hands, that our Chancellor was generouſly deſcended by both Father and Mother, who was a Daughter and Heir of *Beauchamp*; and that he came out of the Houſe of *Wimondeſham*, or *Wimſton*, in the Pariſh of *Modberry*, *Devon*; the moſt ancient Seat of this Name and Family in the Kingdom. In whoſe Poſſeſſion it remained from the Days of King *John* to the Reign of Queen *Elizabeth*, about four hundred Years. So runs the ancient Deed (*d*): "Rex *Johannes* per Literas ſuas Patentes, datas "Anno 10° Regni ſui, conceſſit *Johanni Forteſcue Wimondeſton.* "Com. *Devon*, &c."

Pedigree.

As to his Pedigree, he was the third Son of *Henry Forteſcue*, Lord Chief Juſtice of *Ireland*, who was Son and Heir of Sir *John Forteſcue*, Knt. Captain of *Meaux* Caſtle, and Governor of the Province of *Brie* in the *Iſle* of *France*, under King *Henry* V. which Sir

(*c*) *Eccluſ.* c. 44. (*d*) *Riſdon*, Part II. p. 243. *Prince*'s Worthies.

John was ſecond Son of *William Forteſcue* of *Wimeſton* in the County of *Devon*, Eſq;(*e*) *

Having thus given a ſhort State of the Deſcent of our Chancellor, I ſhall now proceed to the more particular Hiſtory of his Life.

Education. His Youth was moſt excellently inſtituted in Virtue and Learning (*f*), probably in one of our Univerſities: A good Demonſtration whereof are the ſeveral Treatiſes of Law and Politicks, of which he was the Author; and his Authorities are ſuch as *Ariſtotle*, *Tully*, *Quintilian*, *Boetius*, St. *Auſtin*, *Aquinas*, *Ægidius Romanus*, *Pariſienſis*, &c. which we can hardly ſuppoſe, without the Advantages of an Accademical Education. Afterwards he betook himſelf to the Study of the Municipal Laws of *England* (*g*).

Preferments. He made a great Progreſs in his Studies, and ſuch was his Induſtry, that he became one of the *Governors* of *Lincoln's Inn*; which about that Time, as appears by the Rolls(*h*)and Remembrances of that Houſe, was become famous. Sir *John Forteſcue*, Knt. ſometime Lord Chief Juſtice of the King's Bench, ſo renowned for that learned Diſcourſe *de Laudibus*, *&c.* was of *Lincoln's Inn*, *6 Hen.* VI. and was one of the greateſt Glories of it. *A. D.* 1430. he was called to the Degree of a **Serjeant at Law** (*i*). About eleven Years after, being the 19th of the ſame Reign, he was conſtituted the *King's Serjeant*. *A. D.* 1442.(*k*) he was advanced to the Dignity of Lord Chief Juſtice of *England*; in which honourable Station he continued, from the 20th of that King, near to the End of his Reign; during which Time he received many particular Favours from his Sovereign. I find him by **Writ** 25th of *January*, 20 *Hen.* VI. conſtituted Chief Juſtice, and ſo ſummoned from the 23d to the 38th of that King. At laſt, ſuch was the Learning, Worth and Integrity of this Gentleman, that *Henry* VI. advanced him to the high Honour of Lord Chancellor of *England*; the chiefeſt Place of Civil Employment in this Realm. In his Book *de Laudibus* he writes himſelf *Cancellarius Angliæ*. He is called Chancellor, in Introduct. Materiæ ante *Forteſcutum*, ex Impreſſ. Ed. *Whitchurch*, temp. *Hen.* VIII. (*l*) †

He

(*e*) *Fort.* of Monarchy, Pref. XL. The Viſitation Book.

* A Gentleman of good Senſe, who is very converſant in the Affairs of the Family, informs me, that Sir *John Forteſcue* Lord Chief Juſtice, and afterwards Lord Chancellor of *England*, was the third Son of *John Forteſcue*, Knt. Captain of *Meaux*, &c. and not of *Henry Forteſcue*, Chief Juſtice of *Ireland*; who, according to a Pedigree of the Family in his Cuſtody, was the Chancellor's Eldeſt Brother. He thinks it pretty plain, for that the 14th of *Hen.* VI. *Henry Forteſcue* by Deed Indented, did grant and confirm unto *John Forteſcue*, his Brother, and *Iſabella*, who was Wife of the ſaid *John*, all the Meſſuages, Lands and Tenements of *John Forteſcue*, Father of the ſaid *Henry*, in *Overcomb*, *Efford* and *Alſton*, in the Pariſh of *Holboughton*, *Devon*. H. H.

(*f*) *Prince* ubi ſup. (*g*) *Dugd.* 268. (*h*) *Carter's* Heraldry, 245. *Dugd.* 142. *a.* (*i*) Ib. Chron. Series, 61. (*k*) Ib. 62, 3. (*l*) *Spelm.* Gl. 343. *a. Nicholſon*, III. 163. V. Rot. Patent. 20 *Hen.* VI. Pt. 1. *m.* 10. Clauſ. 38 *Hen.* VI. *m.* 30. Rot. in Turr. dorſo *ſummonit. Parliamenti*, 23. *m.* 21. 25 Pt. 1. *m.* 12. — *m.* 24. 27. *m.* 24. 28. *m.* 26. 29. *m.* 31. 31. *m.* 31. 32. *m.* 9. Clauſ. 33. *m.* 31. 38. *m.* 29, 30. W. 555. W. 423. *Hickes's* Theſaur. pr. XLVI. *Baker* 233.

Whether he was actually Chancellor.

† As to the Promotions of Sir *John Forteſcue*, there is no doubt but that he was Chancellor in ſome Sort: But when, or to what Purpoſe, whether ever during the actual Reign of *Hen.* VI. or ſo as to exerciſe his Office in *Weſtminſter-Hall*, may be a Queſtion. By the Year-Book of *Hen.* VI. Pt. the 2d, in *Eaſter Term*, the 38th of that Reign, *A. D.* 1460. he was ſtill in the King's Bench. The three following Terms (all that were in that Reign) I find no Mention made of him, though there were two or three Caſes in B. R. or the *Exchequer Chamber* reported in thoſe

He was certainly a Perſon of great Abilities, of excellent Learning and Authority, of profound Knowledge in the Laws, a good Antiquary, and alſo a Lover of the Polite Studies. His learned Commentaries on the Laws, and his political Writings make him famous to all Poſterity (*m*). Abilities.

His Capacity and Qualifications, natural and acquired, were no doubt equal to that high Truſt and Employment he was called unto, being admirably well verſed in the Laws of *England* (his peculiar Profeſſion). He is mentioned among Authors (*n*) by the honourable Stile of "That great and famous Lawyer."

If we conſider him in the Seat of Juſtice, he diſcharged that important Truſt with ſuch Uprightneſs, that a certain Author (*o*) gives him the Title of *that Learned and Upright Judge*. When in 34 *Hen.* VI. the King made another Sheriff in *Lincolnſhire* than he that was choſen according to Statute, our Chancellor and Sir *John Priſot*, in the Name of the reſt of the Judges ſaid, that the King did an Error (*p*). Character and Behaviour in his Public Capacity.

He went into a voluntary Baniſhment with Prince *Edward*, (*q*) Son of *Henry* VI. where he was near his Perſon to do him what good Offices he could, at which Time he writ his Book *de Laudibus*, a learned Diſcourſe, full of excellent Matter, and well worth the Reading. It was compoſed for the Encouragement and Direction of the Prince in his Studies, and to kindle in him a Deſire to know and underſtand the Laws (*r*).

In that laborious Station wherein he was employ'd, and which might have exhauſted another Man's whole Time, he redeemed ſome vacant Hours, (*s*) which he carefully laid out in penning ſeveral other judicious Books and Tracts, upon Subjects of Importance. How he employ'd his Time.

Terms, and in *Mich. Term* one in *Chancery*. Thoſe Times were very tumultuous, and King *Henry* hardly ever in his own Power. In *July* he was defeated and taken Priſoner by the Earls of *Marche* and *Warwick*. Under their Power, but in his Name, a Parliament was called, and the Duke of *York* declared Heir to the Crown, and to ſucceed after *Henry*'s Death. And though the Queen, about *Chriſtmas*, encounter'd and ſlew the Duke of *York*, and afterwards marched as far as St. *Allans* towards *London*, yet was the King ſo much in the Power of *Warwick*, that he was obliged to be in Perſon in the Army which oppoſed her. That Army was indeed vanquiſhed, and he went over to his Queen: But, upon the Advance of the Earl of *Marche* (preſently after *Ed.* 4.) who had newly beat the Earls of *Pembroke* and *Wilts*; they marched back, and left the Way to *London* and the Throne open, and thereby an End was put to the real Reign of *Henry*. So that, in all the Time before-mentioned, he could hardly make a Chancellor, at leaſt, without the Good Will of the Duke of *York*, or Earl of *Warwick*. By Sir * *John*'s Petition to *Ed.* 4. it is plain he was with King *Henry* in *Scotland*; probably he went to him and his Queen upon *Edward*'s being proclaimed King (perhaps before; poſſibly, to one or other of them, the Summer before) and after the Loſs of the Battle, which followed ſoon after that Proclamation, while the Queen and Prince went to *France*, he accompanied the King into *Scotland*, ſtayed with him, and writ for his Title there. There, or before in *England*, he might be made Chancellor, as Sir *Edward Hyde* was in *Charles* the Second's Exile. By *Coke*'s Preface to his firſt Inſtitute, p. 2. One would think he was removed from the King's Bench 1 *Ed.* 4. and by Conſequence, continued there ſo long. His Effigies on his Monument is only in his Robes of Chief Juſtice. For, to be ſure, they would not venture to give him the Enſigns of any Honour he received from *Henry* after *Edward*'s Poſſeſſion of the Throne. And, I obſerve, that in the Inſcription upon the Marble, added to his Tombſtone, he is ſaid to have been *Cancellarius ſub H.* 6. *rege & Edwardo principe*; that is, as I underſtand it, Under *Hen.* VI. while he was at Liberty, and afterwards under his Son the Prince, whilſt abroad.

(*m*) *Fuller*'s W. 256. Pref. to 3 *Co.* 4. *b.*— 6 *Co.* 1. *a.*—8 *Co.* 4. *b.* 11.— 10 *Co.* 16. W. 236, 334, 367, 525. (*n*) *Dugd.* 142. *Ruſhw.* I. 535. (*o*) *Fuller*'s H. State 262. W. 367, 423. (*p*) Ib. 198. 2 Inſt. 559. V. poſt. p. . *Gale.* Pref. ad Script. *Brit.* Fo. 3. *b.* *Cotton*'s Abr. Rec. 693. *Cott.* Libr. Otho. A. VIII. Fo. 67. 4*to. Nicholſon*, III. 167. Pref. 10 *Co.* 8. *a.* (*q*) W. 177, 222. (*r*) Ib. *Dugd.* 268. *Weſtcott*'s View of *Devon*, MS. (*s*) *Riſdon*, Pt. 2. 244.

* V. *Cott.* Abr. Rec. 693.

He

He very well deſcribes how he ſpent his own Time, in his Book, *de Laudibus* (*t*). "You are to know, ſays he, that the Judges do "not ſit in Court to do Buſineſs above three Hours in the Day, that "is from Eight in the Morning to Eleven. After they have taken "ſome Refreſhment, the Method is, to ſpend the reſt of the Day "in the Study of the Law, reading of the Holy Scriptures, or elſe "it is taken up in ſome other innocent Amuſements, at their Plea-"ſure: So that it is rather a Life of Contemplation, than of Ac-"tion, free from worldly Cares and Avocations."

The Time or Place of his Death are uncertain, the Probability is, that he died at *Ebburton*, near *Cambden*, *Glouceſterſhire*, where he was ſettled: Which Manor and Lands he had by Sale from Sir *Robert Corbett*, as by Deed declared 35 *Hen.* VI. "The Reverſion of his Manor of *Ebrighton*, in the County of *Glouceſter*, to "be held after the Death of *Joyes* late Wife of *John Grevill*, "Eſq;" This he left to his Poſterity, and it ſtill continues in the Name and Family, and belongs to the Lord *Clinton*.

Where buried.

He lies buried in the Pariſh Church belonging to *Ebburton* (*u*), (now written more frequently *Ebrington*,) where in the Chancel there is a Monument erected for him; probably ſoon after his Interment, by the Appearance of its Antiquity and Workmanſhip: On this old Tomb lies his Effigies at full Length in Freeſtone, in his Robes of *Lord Chief Juſtice*; which, doubtleſs, was done at the Time that the ſaid Monument was firſt erected; on the Sides and Ends are the *Forteſcue's* Arms: Over this Tomb a Table of Marble was faſtened, at the Charges of the late Col. *Robert Forteſcue* of *Weare* and *Filleigh*, his direct Heir, with the following Inſcription engraven thereon:

In
Fœlicem & immortalem Memoriam
Clariſſimi Viri Domini
Johannis Forteſcuti
Militis Grandævi, Angliæ Judicis Primarii
Et Proceſſu temporis ſub Hen. 6. Rege &
Edwardo Principe, Summi Cancellarii
Regis Conſiliarii prudentiſſimi
Legum Angliæ peritiſſimi
Nec non earundem
Hyperaſpiſtis
Fortiſſimi
Qui
Corporis Exuvias Lætam Reſur-
rectionem Expectantes,
Hic depoſuit
Marmoreum hoc Monumentum
poſitum eſt A. D.
MDCLXXVII.

Voto & expenſis Roberti Forteſcuti
Armigeri ejuſdem Familiæ Hæ-
redis nuper Defuncti.

(*t*) C. 51. (*u*) *Princ. Camd.* 249. (*z*) Mr. H. H.

Angligenas intra Cancellos Juris & Æqui
  Qui tenuit, Cineres jam tenet Urna Viri.
Lex viva ille fuit patriæ, Lux ſplendida Legis,
  Forte bonis *ſcutum*, ſontibus & *Scutica*.
Clarus erat Titulis, Clarus Majoribus, Arte
  Clarus, Virtute aſt! clarior emicuit!
Jam micat in Tenebris, veluti Carbunculus, Orbi
  Nam Virtus radios non dare tanta nequit.
Vivit adhuc *Forteſcutus* laudatus in Ævum;
  Vivit & in *Legum Laudibus* ille ſuis (*x*).

The Family of the *Forteſcues* hath produced conſiderable Men, both in Letters and Arms. They have matched into many eminent Houſes. There have been of this Name Stateſmen and Soldiers, more, perhaps, than any Family now in Being can value themſelves upon: They have planted themſelves very proſperouſly both in the Weſt and Eaſt Parts of *England*, and have attained Eminency in what Profeſſion ſoever they have applied themſelves unto (*y*). It is remarkable, that ſince the Reign of *Henry* VI. there have been eleven Sheriffs of this Name in *Devonſhire*; no other Family having had ſo many; and the Honour of Knighthood has been frequently conferred upon them.

Mr. *Camden* (*z*) obſerves, that her Majeſty's Deſcent by the Mother's Side was not ſo high, yet noble it was, and branched out by many great Alliances, both through *England* and *Ireland:* That her Great Grandfather's Father was *Jeffrey Bolen*, a Man of a good Family in *Norfolk*, Lord Mayor of the City of *London* in the Year 1457. and at the ſame Time honoured with the Dignity of Knighthood: A ſincere honeſt Man of great Eſtimation, and of ſo large Means, that he matched his Daughters into the noble Houſes of the *Cheneys*, *Heydons*, and *Forteſcues*. His Daughter *Alicia* being married to Sir *John Forteſcue* of *Pulesborn* in Com' *Heref.* (*a*) In *Leland*'s (*b*) Itinerary there's Mention made, among others, of the Family of *Forteſcue*. They have been ſettled in ſeveral Parts of the County of *Devon*, as at

Forteſcue of High Bickington.
High Bickington ——— *Viſitation Book.*

Chettlehampton.
Chettlehampton ——— *ib.*

Combe.
Combe in *Halbeton*; which the Couſins and Heirs of *William de Combe* granted to *John Forteſcue* and *Iſabella* his Wife, and the Heirs and Aſſigns of the ſaid *John* for ever, bearing Date the 19th *Hen.* VI.

Cornwood.
Cornwood. ——— MS. *Coffin* Ar.

Filleigh.
Filleigh, whence the Family of *Filleigh* took their Original. *Simon de Filleigh* held half a Knight's Fee here in *Hen.* II.'s Time. That Name continued Lords thereof unto the Reign of *Henry* IV. then it paſſed to *Trewin* of *Weare*, whoſe only Inheritrix *Joan* took to Husband *Richard Denſell*, whom his Son *Richard* ſucceeded, whoſe Daughter and Heir was married to *Martin Forteſcue*, eldeſt Son to Sir *John Forteſcue*, Chief Juſtice, which Name inheriteth theſe Lands to this Day; where they enjoy a large Demeſne, with

(*x*) *Prince.* (*y*) *Fuller*'s W. 256. (*z*) Introd. Ann. Q. *El. Kennett*, II. 363. *a*.
(*a*) Viſitation Book. 1697. pars 1. 314. *a*. (*b*) Vol. VIII. p. 32. V. Cott. Lib. MS. *Angl. & Hib.* Fol. *Oxon.*

a beautiful Park thereunto belonging (*c*). The preſent Owner is the Right Honourable *Hugh Forteſcue* Lord *Clinton*; who having demanded his Writ of Summons to Parliament, purſuant to a Claim by Right of Marriage, which had lain dormant in the Family ever ſince King *James* I.'s Time, was in 1721. called up to the Houſe of Lords, and on the 18th of *March* his Lordſhip took the Oaths, and was ſeated between the Lords *Fitzwalter* and *Dudley*.

Buckland Filleigh. Buckland Filleigh, the ancient Inheritance of the *Filleighs*, Knights, who held this Land in the Time of *Edward* I. from which Progeny, by the Daughter of *Denſell*, who wedded the Heir of *Weare*, theſe Lands came unto the above *Martin Forteſcue*, and were by him and his Wife given to *William*, their younger Son, which Name poſſeſſeth the Place now. The preſent Owner married the Daughter of *Prideaux*, his Father the Daughter of ——— ——— The Gentleman who now inhabiteth it is *William Forteſcue* Eſq; who married the Daughter of *Troſſe*; his Son, the Daughter of *Dennis* (*d*). *William Forteſcue* Eſq; Attorney General to the Prince, Secretary to the Chancellor of the Exchequer, and Member of Parliament for the Borough of *Newport* in the Iſle of *Wight*, has the preſent Poſſeſſion, by lineal Deſcent and Right of Inheritance.

Hatherleigh. Hatherleigh ——*Viſitation Book.*

Forteſcue of *Hollacombe*, whoſe Daughter and Heir *Agnes* was married to *John Moyle* of *Bake*, *Cornwall*, Eſq;

Lamberton. Lamberton, which *Reginald Aldobede*, or *Adobede*, held by the Conqueror's Gift; this was afterwards the *Giffards* Inheritance, and then it came into the Family of *Forteſcue* in the ſame Manner as *Filleigh* and *Weare-Gifford* (*e*).

Morleigh. William Forteſcue of *Morleigh* in Com' *Devon*, ſecond Son of *Thomas Forteſcue* of *Wimſton*, married *Katherine* the Daughter of ——*Welſh*, a Baron of the Exchequer. *Viſitation Book.*

Norreys. In *North Hewiſh*, near *South-Brent*, *Devon*, is *Norreys* the Lands of One of that Name, in which it continued to the Reign of *Edward* III. when *William Norreys*, by a Daughter of *Roger Collaton*, had Iſſue one Daughter, who married a *Forteſcue*, from which Houſe, *Riſdon* ſays, came the *Forteſcues* in the Eaſt of *England*, (Viz.) at Polesborn (*f*), or Pulesborn in *Hertfordſhire*, (I find that the 2d *Edward* IV. all the Lands of *Sir John Forteſcue* in *Middleſex* and *Hertford*, *Gloceſter*, *Somerſet* and *Wilts* were granted to *John Wenlock* Knight) Fulborn, (*g*) or Fawborn in *Eſſex*, and Saldon (*h*) in *Bucks*.

Polesborn. Fulborn, Saldon.

Preſton. *William Forteſcue* of Preſton was ſecond Son of *John Forteſcue* of *Wimſton* (which *John Forteſcue* had to Mother the Daughter and Heir of *John Preteſton*, or *Preſton*) by *Iſabel* the Daughter of *Thomas Gibbes* of *Fenton* Com. *Devon* (*i*). *Sir Peter Forteſcue* of *Preſton* and *Wood* is mentioned in *Guillim* (*k*).

Eaſt Slapton. Eaſt Slapton. MS. *Coffin.* vid. Vallopit.

Spridleſton. Spridleſton is a Tithing, wherein formerly *William Spriddle* inherited, afterward it came to be a Dwelling of that notable Name of *Forteſcue* (*l*). *John Forteſcue* of *Spirelſton* Com. *Devon* was third Son of *John Forteſcue* of *Wimſton* by *Iſabel* the Daughter of

(*c*) *Riſdon.* (*d*) ibid. (*e*) ibid. (*f*) in *Weſtcott* 'tis *Herefords*, and ſo 'tis in the *Viſitation Book*, v. *Riſd.* Part 2. 231, 2. MS. *Coffin.* (*g*) V. *Cambd.* 358. (*h*) ibid. 281. (*i*) *Viſitation Book.* (*k*) 5 Edit. 1679. p. 66. (*l*) *Riſdon.*

Thomas Gibbes, &c. ut ſupra (*m*). This Seat and Eſtate ſtill continues in the Name of *Forteſcue*.

Vallopit was the ancient Inheritance and Dwelling of a Family ſo called, which, after ſome Deſcents in that Houſe, by a Daughter and Heir of *Nicholas* the laſt, who was Wife of *Henry Forteſcue*, advanced their Eſtate by one of the Heirs of *Hengeſton*, and inveſted that Name with theſe Poſſeſſions: Which Family is diſtinguiſhed by their Dwelling from other of the *Forteſcues* (*n*). The preſent Poſſeſſor is *Edmond Forteſcue* Eſq; a Gentleman of a fair honeſt Character and of great Hoſpitality, ſince dead without Iſſue Male. *Vallopit.*

Weare Gifford. The ancient Inheritance of the *Giffords*, where *Sir Walter Giffard*, Knight, lived in the Time of *Henry* III. who left his Lands to *Emma* his Daughter, who was firſt married to *Sir Hugh Widworthy*. 2. To *William Trewin*. 3. To *Sir Robert Dinham*: She had Iſſue only by *Trewin*, who ſucceeded in the *Giffards* Inheritance. *William* the laſt of this Line, who died the Beginning of *Henry* V.'s Reign, left iſſue a Daughter, who married *Richard Denſell*, whoſe Son *Richard* left one only Daughter, who married *Martin Forteſcue*. The Family hath flouriſhed in this Seat ſome nine Deſcents (*o*). *Weare Gifford.*

Forteſcue of Wood is mentioned in *Riſdon* (*p*), and in *Guillim* ubi ſupra. *Wood.*

The Arms of *Forteſcue* are, *in ſextâ feneſtrâ*, medii Templi Aulâ, *verſus Aquilonem* (*q*). —— There are ſeveral Monuments and Inſcriptions to the Family in the Churches, *Devon*.

I find in *Mr. Willis*'s Notitia Parliamentaria *Hen. Forteſcu* (*r*), Knight of the Shire for *Devon*, 9 *Hen.* V. *John Forteſcue*, Burgeſs for *Taveſtoke*, 9 *Hen.* V. *John Forteſcue* for *Taveſtoke*, 2 & 3 *Hen.* VI. *John Forteſcue* for *Plympton* Com. *Devon*, 8 *Hen.* VI. *Thomas Forteſcue*, of the *Inner Temple* for *Chipping-Wicomb* Bucks, 35 *El.* *William Forteſcue* for *Chipping-Wicomb*, 39 *El.* Members of Parliament of this Family.

I ſhall, in the next Place, ſet down the Worthies of this Name and Family in order of Time, as I have that of the ſeveral Seats where they have lived, in an Alphabetical Series: To arrange them in any other Manner, or diſtinguiſh them in Deſcent, ſo as to give each their due Precedence, ſurpaſſes my Ability.

Richard Forteſcue of *Wimſton* in the County of *Devon* lived in the Time of *William* the Conqueror. *Viſitation Book*. *Richard Forteſcu* of Wimſton.

John Forteſcue de *Valepit* held 8 *Ed.* I. *Stancourt prior* in *Colrug.* Hund. *Devon* (*ſ*). *John Forteſcue* de Valepit.

A. D. 1461. There was one *Sir Richard Forteſcue*, Knt. ſlain at the Battle of *St. Albans* (*t*).

William Forteſcue of *Wimſton*, a Deſcendant of the above Richard Forteſcue, in the Eighth Degree, incluſive, had, by his Wife *Iſabel*, the Daughter and Coheir of *John Beauchamp*, *Somerſets*, *Sir John Forteſcue*, a ſecond Son, Captain of *Meaux* and Go- *William Forteſcue* Father of *Sir John Forteſcue*.

(*m*) *Viſitation Book.* (*n*) *Riſdon.* (*o*) *ibid.* (*p*) *ibid.* Tit. *North-Hewiſh.* (*q*) *Dugd.* 230. (*r*) I venture to read it *Forteſcu*; probably, becauſe the (c) being deſcribed beyond its Proportion of an Oval, it might eaſily be miſtaken by the Amanuenſis for an (o) (it being pr. *Forteſon*) and the Miſtake of (u) for (n) is very obvious. (*ſ*) MS. *Coffin.* (*t*) *Stow*'s Ann. 1631. p. 339.

vernor

vernor of *Brie* in *France*, under *Hen.* V. who had by *Matilda*, Daughter and Heir of *Chamberlayne* of *Suffolk* (*u*).

Henry Forteſcue, Chief Juſtice of *Ireland*, a Man (*x*) of Great Eſteem for his Virtue and noble Sincerity, in ſuch a Place of Authority. His eldeſt Son was *Henry Forteſcue* of *Wood*. The ſecond Son was *Richard Forteſcue*.

Sir John Forteſcue Chief Juſtice and Lord Chancellor of *England* was his third Son.

A. D. 1471. Anno Regni *Ed.* IV. 11° Richard Forteſcue, Eſq; of the Body to the King, came down, and, by open Offer of the King's free Pardon to the Earl of *Oxford*'s Men, and ſecret practiſing, wrought ſo far, that the Earl was forced to yield *St. Michael*'s *Mount*, *Cornwall*, which he had fortified and held out againſt the King (*y*).

A. D. 1471. There was one John Forteſcue Eſq; Sheriff of *Cornwall*. (*z*)

There was one John Forteſcue Eſq; High Sheriff of *Devon* no leſs than three Times in the troubleſome Reign of *Hen.* VII. a Prince who well knew how to make Choice of fit Men for his Service (*a*).

Sir Adrian Forteſcue. Whitl. H. 170.

Sir Adrian Forteſcue, called by *Sir Thomas Moor* (*b*), Sir John Forteſcue, was Porter of the Town of *Calais*, who came over with *Hen.* VII. and effectually aſſiſting him to obtain the Crown (*c*); was by him deſervedly created a Knight Banneret. He was afterwards, (viz.) 1539, unhappily attainted in Parliament of Treaſon, together with Cardinal *Pole*, his Mother the Counteſs of *Salisbury*, and others, as conſpiring with the Pope againſt the King, and beheaded by *Hen.* VIII. (*d*) *Hollinſhead*, *Speed*, *Stow*, &c. only mention his Death, in General, and that the Records of it are ſhort. ——— His Daughter (*e*) (Heir to her Mother, who was a *Stoner*, an ancient Family in *Oxfordſhire*) was married to the firſt Baron *Wentworth*.

Lewis Forteſcue, a younger Son of John Forteſcue of *Spirelſton*, Com. *Devon*, was Baron of the Exchequer, Temp. *Hen.* VIII. *Viſitation Book*.

Sir John Forteſcue Chancellor of the Exchequer.

Among the Worthies of this Family, Sir John Forteſcue, Knight, Chancellor of the Exchequer, and, of the Privy Council to Queen *Elizabeth* and King *James* (*f*), was a great Ornament to his Country, a Man of deep Learning and approved Wiſdom: Where, or when born is uncertain, and it is equally uncertain, to what particular Branch, among ſo many of this Name, in *Devon*, to reduce Him. He was Tutor (*g*) to Queen *Elizabeth* for the Languages; being a great Maſter of the *Greek* and *Latin* Tongues. She made him Chancellor of the Exchequer, and of her Privy Council. Her Saying was, " Two Men out-did her Expectation, *Forteſcue* for " Integrity, and *Walſingham* for Subtilty and officious Services." A very worthy Gentleman, who was ſo jealous of the Liberty of his

(*u*) *Viſitation Book.* (*x*) *Weſtcott. Riſd.* Part 2. p. 244. (*y*) *Kennett*, I. 457. a. *Hol.* 1587. p. 749. b. *Norden* 39. *Rapin*, VI. 101. (*z*) *Fuller*'s W. 208. (*a*) *ibid.* 270. (*b*) In his Life *Rich.* III. (*c*) *Fuller*'s W. 256. (*d*) v. *Weſtcott. Cambd.* 266 (23) *Hall* and *Hol.* Temp. R. 3. *Kennett*, I. 508. a. II. 219. a. b. (*e*) *Cambd.* 266 (23) v. *Rapin*, VII. 568. *Burnett*, H. Reform. I. 264. 358. Ap. 295. (*f*) *Weſtcott. Fuller*'s W. 256. *Riſdon.* (*g*) *Lloyd* 556. *Riſd.* Part 2. 244, 348.

Country, that he mov'd to have King *James* obliged to Articles before he was admitted. So did *Sir Walter Raleigh*, and other generous Spirits; but the Earl of *Northumberland* ſwore, he would bring him in by the Sword; and *Cecil* the Secretary, to have the Merit of his eaſy Admittance, fruſtrated all Motions of Articles (*h*), upon which Account the King (*i*) always bore him a Grudge, tho' he continued him of his Council, and made an Exchange of his Office; making him Chancellor of the Dutchy of *Lancaſter*, inſtead of Chancellor of the Exchequer. He left a good Eſtate in *Buckinghamſhire*, near *Newport*, called *Saulden* (*k*); where he built a fair and neat Houſe for him and his Family, where they have continued even to this Day. *Sir John* died, and was buried July 4th 1608. The famous *Mr. Camden*, *Clarencieux* King at Arms, ordering and ſetting forth his Funeral (*l*). The laſt of the Family, *Sir Francis Forteſcue*, died at the *Bath*, Tueſday November 11th 1729, having left no Iſſue. He was a Roman Catholick, but ſo good a Neighbour and charitable to the Poor, that his Country have a great Loſs in him.

Sir Anthony Forteſcue was Marſhal of *Ireland*, A. D. 1562. This Sir Anthony Forteſcue together with *Arthur Pool* and *Sir Geoffry Pool*, his Brother, whoſe Siſter (*m*) he had married, had formed Factions in the Kingdom. Upon this Advice they were ſent to Priſon, and afterwards tried; they confeſſed a Deſign of withdrawing into *France* to the Duke of *Guiſe*, of returning from thence into the Principality of *Wales* with a *French* Army, in order to proclaim *Mary* Queen of *Scots*, Queen of *England*, and *Arthur Pool* Duke of *Clarence:* They proteſted notwithſtanding that they had no Intention to attempt any Thing during the Queen's Life. Their own Confeſſion condemned them; but, the Queen, in Conſideration of their illuſtrious Deſcent, forgave their Offence (*n*). *Sir Anthony Forteſcue.*

Sir John Forteſcue, Maſter of the Wardrobe, *obiit* December 23d 1607. *Viſitation Book.*

Anno 1619. Feb. the King was pleaſed to Knight ——— *Forteſcue*, and others, late Commiſſioners for the Navy and Domeſtick Affairs (*o*).

I find *Mr. Nicholas Forteſcue* one of the Lords of *Carmeal Ball*, a Tin Mine ſo called in the Hundred of *Penwith*, *Cornwal* (*p*).

Skyberio, in the Pariſh of *Mawgan* in *Meneag*, in the Hundred of *Kyrier*, *Cornwal*, the Houſe of *Forteſcue* (*q*).

Sir Francis Forteſcue, Knight of the *Bath* (*r*).

Sir William Forteſcue, his Son (*s*).

Sir Edmond Forteſcue of *Vallowpit*, after having ſerved *Charles* I. with great Courage and Fidelity, as a brave Commander in the Wars, and made as Honourable Articles for the Surrender of *Charles-Fort* at *Salcombe*, *Devon*, (whereof he was Governor) as could be demanded; upon the Fall of the King and his Cauſe, he fled beyond Sea, and died in *Holland*; he was interred at *Delft*, where is a Monument erected to his Memory. He was forced to *Sir Edmond Forteſcue.*

(*h*) *Oldmixon* 15 b. (*i*) *Osborne*'s Mem. I. 1 Part, § 1. pp. 6, 7. § 3. (*k*) *Camd.* 281. (*l*) *Wood*'s Ath. I. 482. Kennett, II. 557. b. 568. a. 610. a. *Rapin*, IX. 277. *Oldm.* 22. b. (*m*) (*Daughter*) Viſitation Book. (*n*) *Camd.* Ann. A. D. 1562. *Kennet*, II. 389. a. *Rapin*, VIII. 295. (*o*) Ann. J. I. *Kennett*, II. 651. (*p*) *Norden*, p. 42. (*q*) ib. p. 51. *Viſitation Book.* (*r*) ib. (*s*) ib.

compound for his Eſtate at Six hundred and ſixty Pounds and upwards, in the late Troubles (*t*).

There was one *Sir Nicholas Forteſcue*, Knight of *Malta*, ſlain in *Lancaſhire*, in the late Wars in *England*, his ſaying was, " Let " Reputation do the Reſt (*u*).

Sir Faithful Forteſcue.

Sir Faithful Forteſcue, third Son of *John Forteſcue* of *Buckland-Filleigh*, in the North-weſt Parts of *Devon* (that is, his ſecond Son by his ſecond Wife, Daughter of *Sir John Chicheſter* of *Raleigh*, Knight) was a good Soldier, and for his Service knighted in *Ireland*; what he is moſt worthy to be memorized for, is his coming over to King *Charles* I. at *Edghill* with his Troop (*x*).

The *Viſitation Book* mentions a *Sir Faithful Forteſcue*, third Son of *John Forteſcue* of *Buckland Filleigh*, by *Anne* Daughter of *Walter Porter* of *Thetford* Com. *Norfolk*, (who was the Relict of *Degorie Thorne* of *Shepwaſh*) Governor of *Knockfergus* in *Ireland*.

There was one *John Forteſcue* of *Cookill*, *Worceſterſhire*, Eſq; who paid Two hundred thirty-four Pounds for his Loyalty, and *John Forteſcue* of *Bridleſt*, *Devon*, (perhaps it ſhould be *Spridleſtow*) who paid Two hundred and two Pounds (*y*).

There was one *Col. Forteſcue* in the Parliament-Army, after it was new modelled (*z*). There was alſo one of the Name of *great* Eminency and Command in the Fleet, in the Reigns of King *Charles* II. and King *James* II.

A Catalogue of the Books and Tracts written by Sir John Forteſcue, *Lord Chief Juſtice and Chancellor of* England; *and in what Libraries they are to be found.*

I. *DE laudibus legum Angliæ.* Ex Impreſſ. *Ed. Whitchurch*, temp. *Hen.* VIII. (*). This Book was firſt tranſlated and publiſhed, together with its *Engliſh* Verſion, by *Robert Mulcaſter*, 8°. *Lond.* 1599. (Printed by *Thomas Wight* and *Bonham Norton*, Cum Privilegio) under the Title of " A learned Commen- " tary of the Politic Laws of *England:* Wherein by moſt pithy " Reaſons and Demonſtrations, they are plainly proved to excel, " as well the *Civil Laws* of the Empire, as alſo all other Laws of " the World, with a large Diſcourſe of the Difference between the " two Governments of Kingdoms, whereof the One is only Regal, " and the other conſiſteth of *Regal and Politick* Adminiſtration " conjoin'd." —— Written in Latin by the Learned and Right Honourable *Mr. Forteſcue*, Knight, Lord Chancellor of *England* in the Time of *Hen.* VI. A. D. 1616. It was reviſed and improved with the Notes of *Mr. Selden*. This Edition being out of Print, the Company of Stationers gave leave to one of their Body to reprint it: But he publiſhed it in a very careleſs and ſlovenly Manner (*a*). The literal Faults, eſpecially in the *Latin* Text, are very numerous: And ſome of them ſuch as moſt wretchedly pervert the Author's Senſe and Meaning. *Mr. Waterhouſe* took the good Pains to write a Gloſs, or Commentary upon it, ſuch as uſual-

(*t*) *Lloyd*'s Mem. 556. *Oldmixon* 312. a. (*u*) *Lloyd*, 668 & ſeqq. (*x*) *Weſtcott*, *Lloyd*'s *Ld. Clar.* Fol. II. 36, 38, 121. (*y*) *Lloyd*'s Mem. (*z*) *Oldmixon*.
(*) *Mr. Waterhouſe*, Pref. Marg. (*a*) *Nicholſon*, III. 166.

ly attends Books of Value and Authority, under the Title of, *Forteſcutus illuſtratus*. It was wrote during his Exile, for the Benefit of *Edward*, Prince of *Wales*, Son of *Henry* VI. adviſing him to the Studies of the Laws of *England*; ſaid to be tranſcribed by *Sir Adrian Forteſcue*, on Paper, containing a great Variety of Chapters (*b*).

II. A Treatiſe of Forteſcue *de Jure Regali & Politico*. The firſt Thing in this MS. is his Treatiſe, *de Laudibus*. Then follows his *Dominium Regale*, *&c.* In this the two laſt Chapters are wanting, *Finis* is placed at the End of the XVIII. Chapter, and almoſt a whole Page blank (*c*). *Sir John Forteſcue* (Lord Chief Juſtice of *England*), his Treatiſe *de Dominio Regali & Politico*, *&c.* written by the Hand of *Sir Adrian Forteſcue* (*d*). This Piece has been publiſhed by the preſent *Sir John Forteſcue*, under the Title of the Difference between an abſolute and limited Monarchy, with ſome Remarks and a learned Preface, inſcribed to the Right Honourable *Hugh Forteſcue* Lord *Clinton* (*e*).

III. *Opuſculum de Natura legis Naturæ* (*f*), *&c.* A pretty fair Book for the Time when it was written. " A curious MS. on Paper " ſmall Folio, with large Margins, eſpecially at the Bottom, writ " on both Sides, without Introduction, Dedication or Preface." —— Each Chapter hath its Contents. The whole Title is,

Opuſculum de Natura legis Naturæ,
Et,
De ejus cenſura in Succeſſione Regnorum Supremorum.

It is diſtinguiſhed as a firſt Part, (*pars prima*). The Concluſion of this Piece (Cap. XLVIII.) ſeems to intimate an Argument upon the Rules of Succeſſion to Kingdoms in general. It is in the following Words, " *Scriptor progreditur, alium ſuperinde, quod de Jure ſuc-* " *cedendi in Regnis ſupremis intitulabitur, exordiens ſic Libellum.*" This *Second Part* is now loſt, or probably deſtroyed by its Author. *Mr. Waterhouſe* (*g*), in his Commentary on *Forteſcue*, mentions the *Opuſculum* under the Character of " An excellent Treatiſe, a " Book of Worth and Weight, purpoſely penn'd to ſet forth to the " Prince the juſt Meaſure of Government according to the Law of " Nature and Nations." Tho' the Language be a little incorrect, the Senſe, conſidering the Time when the Author wrote, is very extraordinary, and he muſt be allowed to have been a Perſon of general and uſeful Learning. This is alſo in the *Worſley-Library*, under the Title of, *Tractatus de Naturâ legis Naturæ* per D. Joannem Forteſcue (*h*). The Book *de Vigore legis Naturalis*, mentioned by both *Bale* and *Pits* (*i*), probably is the *Opuſculum* (*k*).

IV. Defenſio Juris Domus *Lancaſtriæ* (*l*).

V. A Defenſe of the Houſe of *Lancaſter*, one Leaf (*m*).

VI. Genealogy of the Houſe of *Lancaſter* (*n*).

(*b*) W. 215. Bibl. *Bodl.* 1799. *Digby* 198. p. 48. Catt. Libb. MS. *Angl.* & *Hib.* Fo. *Oxon.* 1697. I. 87. a. Bibl. *Cott.* Otho A. I. Fo. 1. Under the General Title, *de Legibus Angliæ*, v. *Dugd.* 58. (*c*) Bibl. *Bodl.* 1799. *Digby* 198. Bibl. *Cott. Claudius.* A. VIII. 21. *Dugd.* 58. b. Bibl. *Cott. Otho* A. 2. Fo. 46. Bibl. *Bodl. Laud.* I. 1387. 47. ib. *Digby* 1746. 145. Catt. Libb. MS. I. p. 87. a. v. *Dugd.* 58. W. 177. *Seld.* II. 1118. *Fort.* of Mon. Pref. XXXVI. (*d*) ib. (*e*) 8°. *Lond.* 1714. (*f*) Catt. Libb. MS. 66. a. 72. a. 83. b. (*g*) pp. 215, 423. (*h*) Catt. Libb. MS. II. 213. a. (*i*) V. Teſtimonies before the *Latin* Text. (*k*) *Dugd.* 58. (*l*) Bibl. *Cott. Otho* A. 3. Fo. 98. (*m*) ib. 4. F. 110. (*n*) Bibl. *Cott. Otho* A. 5. F. 111. (but ſhou'd be 91. being miſplac'd by the Bookbinder).

VII. Of the Title of the Houſe of *York* (*o*).

VIII. Genealogia Regum *Scotiæ*. In the ſame Hand (*p*).

IX. Defence of the Houſe of *York*, 4*to*. (*q*) In Coll. MSS. *Jameſii* (*r*). Quædam excerpta ex *Forteſcue contra Titulum Edwardi* 4. in which you will find remarkable. *Ad que dicit Miles prædictus, quòd nulla Mulier, obſtantibus Lege & Conſuetudine* Angliæ, *in Jure Coronæ & Regni illius ſuccedere poteſt.* Sed, &c.

X. A Dialogue between Underſtanding and Faith, 6 Leaves, Fol. written by *Sir John Forteſcue* in the Time of King *Hen.* VI. *in quo oſtendit quibus modis & rationibus Deus ſæpe caſtigat & punit Reges per eos, qui magis contra illum deliquerunt* (*s*). He is alſo ſaid to have written a Prayer Book (*t*).

XI. *Sir John Forteſcue*'s Declaracioun upon certayn Wrytingis ſent oute of *Scottelond*, ayenſt the Kingis Title of his Roialme of *Englond*, 16 Leaves, 4°. all in a Hand as old as *Sir John*'s Time (*u*). It is writ in Vindication of King *Henry*'s Title, wrote in *Engliſh*, it contains 30 Pages in Folio (*x*).

Mr. Dugdale (*y*) mentions an Abridgment of the *Book of Aſſizes*, perform'd by our Author, but he vouches a wrong Authority; and I no where find any ſuch attributed to him.

What is mentioned (*z*) to be writ by him under the Title of, "*De Diſcrimine Legum:* Or, the *Laws Civil* and *Provincial*," in one Book, is determined by *Bale* and *Pits* (*a*) to be his Book *de Laudibus*; tho' they are mentioned by them as two different Pieces; I attribute it to their Miſtake, neither of them being infallible.

The Advices from the *Cotton* Library, I am obliged to place to the Account and great Humanity of *Mr. Caſley* Sub-Librarian of the *King*'s and *Cotton*-Libraries, who was at the Pains of ſearching and ſending me a Catalogue of all the MS. Pieces of *Forteſcue* in that Library; who gives it as his Opinion, that they are all in a Hand as old as *Sir John Forteſcue*'s Time.

Juries. That Part of the Preface, which relates to **Juries**, was written before the Bill paſt in Parliament, "For their better Regulation." I chuſe to let it reſt as it is. As the Act is but Temporary, "To "continue and be in Force only until the firſt Day of *September*, "One thouſand ſeven hundred and thirty-three, and from thence "to the End of then next Seſſion of Parliament, and no longer." Beſides, for what appears, it has Reſpect only to "Trials of Iſſues "joined, to be tried before the Juſtices of Aſſize, or Niſi Prius." By an Addition and Amendment to this Law; and if the Regulation were made to extend alſo to Trials in Capital Caſes, innocent Perſons will have more than a bare Chance for their Deliverance: The Guilty will be well entitled to their Deſerts, *viz.* that Puniſhment which the Laws and common Juſtice require, and no Odium can reflect in the Caſe of State Trials. [Stat. *Geo.* 2. *p.* 519. *V.* 7 *&* 8 *W.* 3. *c.* 32. 3 *&* 4 *Annæ*, *c.* 18. 10 *Annæ*, *c.* 14.

Trewarthennick, Cornwall.
April 17th 1732.

(*o*) ib. 6. F. 92. v. *Nicholſon*, III. 167. (*p*) Bibl. *Cott. Otho* A. 7. F. 96. (*q*) ib. 8. F. 67. (*r*) 28. p. 10. Catt. Libb. MS. p. 262. b. *Wood*'s *Ath.* I. 616. (*s*) Bibl. *Cott. Vitell.* E. X. 25. Fo. 196. (*t*) *Riſdon*, II. 244, 354. (*u*) King's Libr. 17. D.XV. 3. 4° Bibl. *Yelv.* 5260. Vol. XXI. Catt. Lib. MSS. II. 213. a. (*x*) ib. (*y*) ubi ſup. (*z*) ibid. (*a*) V. Teſtimonies before the *Latin* Text.

The Barony of Clinton.

HENRY E. of Lincoln v. Samuel Rolle & al. Caſes in Parliament by Sir Bart. Shower, p. 154.

Theophilus Com. de Lincoln,

2 Arabella Rolle. | Edr'us Dom. Clinton ob. vita Patris, | Cath. 1 Booth. | 3 Mar. Boſcawen

Edr'us Com. de Lincoln.

Bridget Forteſcue

Hugh Lord Clinton ſo declared by K. Geo. 1ſt. Feb. 1720.

EDward the firſt Earl of Lincoln had Iſſue by Urſula, the Daughter of William Lord Stourton, Henry, who had Iſſue by Catherine, the Daughter of Francis Earl of Huntington, Thomas, who (by El. One of the Daughters of Sir Henry Knevet of Charlton in the County of Wilts) had Iſſue Seven Sons and Nine Daughters. Henry and Thomas the two Eldeſt died Young, Theophilus the third Son ſucceeded his Father in the Earldom of Lincoln, was made Knight of the Bath at the Creation of the Princeſs Anne 1616, and married Bridget One of the Daughters of William Viſcount Say and Sele, and had Iſſue Edward who died (Vita Patris) and had Iſſue Edward his Son, who ſucceeded his Grandfather in the Earldom of Lincoln; but He dying without Iſſue, the Earldom of Lincoln went to his Great Uncle Edward's Iſſue, who was the next Brother to Theophilus Earl of Lincoln above-mentioned; And the Barony of Clinton amongſt his Aunts, (Viz.) Catherine married to Sir George Booth, Arabella married to Robert Rolle of Heanton in Devon (Grandfather to the Lady Walpole); Margaret married Hugh Boſcawen, and had Iſſue One Daughter married to Hugh Forteſcue of Filleigh in the County of Devon, Eſq; whoſe Son Hugh was by King Geo. I. in Feb. 1720. declared Lord Clinton.

The DIPLOMA *of the Univerſity of* OXFORD *in Convocation aſſembled, conferring the Degree of Doctor of Laws upon the Honourable* Sir John Forteſcue, *one of the Judges of his Majeſty's Court of Common Pleas.*

CAncellarius, Magiſtri & Scholares Univerſ. Oxon. Omnibus ad quos Præſentes Literæ pervenerint Salutem in Domino Sempiternam. Cum eum in finem Gradus Academici a Majoribus noſtris prudenter inſtituti fuerint, ut Viri de Academia, de Eccleſia, de Principe, de Republica optime meriti, ſeu in gremio noſtræ matris educati, ſeu aliunde bonarum Artium Diſciplinis eruditi, iſtis inſignibus a Literatorum vulgo ſecernerentur; Sciatis quod NOS, ea ſola qua poſſumus Via, Gradu Doctoris in jure Civili libenter ſtudioſeq; conceſſo, teſtamur quanti facimus *Johannem Forteſcue* Militem, e Curia Communium Placitorum Juſticiarium Juris peritiſſimum, mira ſemper in has Muſarum ſedes benevolentia propendentem, nec minorem inde reportantem Virum perantiqua illius *Johannis Forteſcue* Militis, qui, regnante *Henrico* ſexto, ſummi Juſticiarii Officium tanta cum dignitate per Viginti annos implevit, ſtirpe ortum; & quod pluris æſtimamus, ad magni ſui Anteceſſoris exemplum ſe feliciter ubiq; componentem, ſive cum eo in Scriptis leges Angliæ eleganter collaudet, ſive Monarchiam juſtis limitibus concluſam Abſolutæ præponat, ſive iis Artibus, quæ optimum quemq; ornant Judicem, audiendi lenitate, explicandi Scientia, æqualitate decernendi mirifice excellat; Virum quem, pari cum ſit induſtria, pari exercitatione, pari ingenio, uberiori fortaſſe doctrina locupletato, pari erga patriam amore, erga Principem fide, parem etiam Honoris gradum conſecuturum non dubitamus; Virum denique, cui non ſatis eſſe videtur relictam a Majoribus Gloriam & Domeſticam Laudem tueri, niſi & hoc proprium ſuæ familiæ decus aſtruat, ut dum Amplitudini, & Privilegiorum incolumitati ſuæ Curiæ prudenter conſulit, idem, pro ſingulari ſua moderatione & Abſtinentia, jura conceſſa noſtra non invideat. Idcirco in ſolenni convocatione Doctorum, Magiſtrorum, Regentium & non Regentium quarto die menſis Maii, Anno Domini Milleſimo Septingenteſimo triceſimo tertio habita, conſpirantibus omnium Suffragiis, eundem Honorabilem & Egregium Virum, *Johannem Forteſcue* Militem, Doctorem in jure Civili creavimus & conſtituimus; eumq; Virtute præſentis Diplomatis Singulis juribus, Privilegiis & Honoribus Gradui iſti quaqua pertinentibus Honoris cauſa, frui & gaudere juſſimus. In cujus rei Teſtimonium Sigillum Univerſitatis *Oxon.* commune, quo hac in parte utimur, præſentibus apponi fecimus. DAT. in Domo noſtræ Convocationis Anno Domini Die & Menſe prædict'.

THE TABLE and CONTENTS OF THE CHAPTERS.

The Introduction. lxiii

CHAP. I.

The Chancellor exhorts the Prince to the Study of the Laws. Page 1

CHAP. II.

The Prince's Answer. 3

CHAP. III.

The Chancellor enforceth his Exhortation. 4

CHAP. IV.

He proves that a Prince by the Laws may be made happy. 6

CHAP. V.

Ignorance of the Laws causes a Contempt thereof. 8

CHAP. VI.

A Repetition of his Exhortation. 11

CHAP. VII.

The Prince yields his Assent, but proposes his Doubts. 12

CHAP. VIII.

Such a Knowledge of the Law as is necessary for a Prince is soon to be acquired. 13

CHAP. IX.

A King, whose Government is Political, cannot change the Laws. 16

CHAP. X.

The Prince proposes a Question. 19

CHAP. XI.

The Chancellor for Answer refers the Prince to his Treatise concerning the Laws of Nature, where the aforesaid Question is handled at large. ibid.

CHAP. XII.
How Kingdoms ruled by Regal Government first began. Page 19

CHAP. XIII.
How those ruled by Political Government first began. 21

CHAP. XIV.
The Prince abridges what the Chancellor had been discoursing of in the two foregoing Chapters. 26

CHAP. XV.
All Laws are the Law of Nature, Customs or Statutes. 28

CHAP. XVI.
The Law of Nature in all Countries is the same. 29

CHAP. XVII.
The Customs of England *are of great Antiquity received and approved of by Five several Nations successively.* 36

CHAP. XVIII.
How Statutes *are made in* England. 34

CHAP. XIX.
The Difference between the Civil Laws and the Laws of England. 35

CHAP. XX.
The first Case wherein the Civil Laws and the Laws of England *differ.* 36

CHAP. XXI.
The Inconveniencies of that Law which tries Causes by Witnesses only. 37

CHAP. XXII.
Concerning Torture and putting to the Rack. 41

CHAP. XXIII.
The Civil Law defective in doing Justice. 45

CHAP. XXIV.
The Division of Counties. Sheriffs and their Appointment. 46

CHAP. XXV.
Jurors, How chosen and sworn. 50

CHAP. XXVI.
How Jurors are informed by Evidences. The Way of Proceeding in Civil Causes. 54

CHAP. XXVII.

The Way of Proceeding in Capital Caſes. Page 57

CHAP. XXVIII.

The Prince owns his Conviction, that the Laws of England *are much more commodious for the Subject as to the Proceedings in the above Inſtances, than the Civil Law.* 60

CHAP. XXIX.

The Reaſons why Inqueſts are not made up of Jurors of XII *Men in other Countries.* 61

CHAP. XXX.

The Prince commends the Laws of England *with Reſpect to their Proceeding by Juries.* 65

CHAP. XXXI.

Whether the Proceeding by Jury be repugnant to the Law of GOD, or not. ibid.

CHAP. XXXII.

The Chancellor's Anſwer. 66

CHAP. XXXIII.

The Prince asks the Reaſon why ſome of our Kings have taken Diſguſt at the Laws of England. 73

CHAP. XXXIV.

The Chancellor's Anſwer. 75

CHAP. XXXV.

The Inconveniencies which happen in France *by Means of the Abſolute Regal Government.* 77

CHAP. XXXVI.

The Comparative Advantages in England, *where the Government is of a mixt Nature, made up of the Regal and Political.* 82

CHAP. XXXVII.

Concerning the Regal Government, and the Political Government. 84

CHAP. XXXVIII.

The Prince deſires the Chancellor to proceed to other Caſes wherein the Laws of England *and the Civil Laws diſagree.* 87

CHAP. XXXIX.

Concerning the Legitimation of Children born before Matrimony. ibid.

CHAP. XL.

The Reaſons why Baſe-born Children are not in England *by the ſubſequent Marriage legitimated.* 89

CHAP. XII.
How Kingdoms ruled by Regal Government first began. Page 19

CHAP. XIII.
How those ruled by Political Government first began. 21

CHAP. XIV.
The Prince abridges what the Chancellor had been discoursing of in the two foregoing Chapters. 26

CHAP. XV.
All Laws are the Law of Nature, Customs or Statutes. 28

CHAP. XVI.
The Law of Nature in all Countries is the same. 29

CHAP. XVII.
The Customs of England *are of great Antiquity received and approved of by Five several Nations successively.* 36

CHAP. XVIII.
How Statutes *are made in* England. 34

CHAP. XIX.
The Difference between the Civil Laws and the Laws of England. 35

CHAP. XX.
The first Case wherein the Civil Laws and the Laws of England *differ.* 36

CHAP. XXI.
The Inconveniencies of that Law which tries Causes by Witnesses only. 37

CHAP. XXII.
Concerning Torture and putting to the Rack. 41

CHAP. XXIII.
The Civil Law defective in doing Justice. 45

CHAP. XXIV.
The Division of Counties. Sheriffs and their Appointment. 46

CHAP. XXV.
Jurors, How chosen and sworn. 50

CHAP. XXVI.
How Jurors are informed by Evidences. The Way of Proceeding in Civil Causes. 54

CHAP. XXVII.

The Way of Proceeding in Capital Caſes. Page 57

CHAP. XXVIII.

The Prince owns his Conviction, that the Laws of England *are much more commodious for the Subject as to the Proceedings in the above Inſtances, than the Civil Law.* 60

CHAP. XXIX.

The Reaſons why Inqueſts are not made up of Jurors of XII *Men in other Countries.* 61

CHAP. XXX.

The Prince commends the Laws of England *with Reſpect to their Proceeding by Juries.* 65

CHAP. XXXI.

Whether the Proceeding by Jury be repugnant to the Law of GOD, or not. ibid.

CHAP. XXXII.

The Chancellor's Anſwer. 66

CHAP. XXXIII.

The Prince asks the Reaſon why ſome of our Kings have taken Diſguſt at the Laws of England. 73

CHAP. XXXIV.

The Chancellor's Anſwer. 75

CHAP. XXXV.

The Inconveniencies which happen in France *by Means of the Abſolute Regal Government.* 77

CHAP. XXXVI.

The Comparative Advantages in England, *where the Government is of a mixt Nature, made up of the Regal and Political.* 82

CHAP. XXXVII.

Concerning the Regal Government, and the Political Government. 84

CHAP. XXXVIII.

The Prince deſires the Chancellor to proceed to other Caſes wherein the Laws of England *and the Civil Laws diſagree.* 87

CHAP. XXXIX.

Concerning the Legitimation of Children born before Matrimony. ibid.

CHAP. XL.

The Reaſons why Baſe-born Children are not in England *by the ſubſequent Marriage legitimated.* 89

CHAP. XLI.

The Prince's Approbation of the Reasons given in the foregoing Chapter. Page 93

CHAP. XLII.

Concerning the Rule of the Civil Law. Partus semper sequitur Ventrem. 94

CHAP. XLIII.

The Prince yields his Assent to the Chancellor and disapproves of the said Rule. 97

CHAP. XLIV.

Concerning the Tuition of Orphans. 98

CHAP. XLV.

Concerning the Education of the Young Nobility during their Minority. 101

CHAP. XLVI.

Concerning open Theft, and private Theft. 103

CHAP. XLVII.

The Prince passes on to an Enquiry why the Laws of England *are not taught in Our Universities, and why there are not Degrees conferr'd on the Common Lawyers, as is usual in the other Professions.* 104

CHAP. XLVIII.

The Chancellor's Answer. 105

CHAP. XLIX.

The Disposition of the General Study of the Laws of England. *Of the Inns of Chancery, and the Inns of Court, and that they exceed in Number any of the Foreign Universities.* 109

CHAP. L.

Of the State, Degree and Creation of a Serjeant at Law. 113

CHAP. LI.

Of the Judges of the Courts in Westminster-Hall, *the Manner of their Creation, Habit and Employment.* 116

CHAP. LII.

The Prince starts an Objection with Respect to the Delays in Law-Proceedings. 123

CHAP. LIII.

The Chancellor's Answer. 124

CHAP. LIV.

The Conclusion. 128

THE INTRODUCTION.

DUring that Impious and Unnatural Civil War between the Houſes of *York* and *Lancaſter*, which not long ſince raged in *England*, and by Means whereof, their Sovereign King (a) *Henry* VI. with his Conſort Queen (b) *Margaret*, who was Daughter of the King of *Jeruſalem* and *Sicily*, and their only Son (c) *Edward* Prince of *Wales*, were obliged to quit the Kingdom: And at laſt, the King, being taken Priſoner by his Subjects, ſuffered a (d) very long and terrible Impriſonment. But the Queen, with her

(a) King *Henry* VI. after the Battle of *Towton* in *Yorkſhire*, was obliged to quit the Kingdom, and fly into *Scotland*. This was the Seventh Battle between the Houſes of *York* and *Lancaſter*. [1] Mr. *Camden* calls it the true Engliſh *Pharſalia*. It was fought on Palm-Sunday, A. D. 1461. V. Speed 687. (9) Baker 217. Kennett 432. Eachard, I. 521. Rapin, VI. p. 4.

(b) She was Daughter of *Rayner* Duke of *Anjou* and *Lorrain*, a Prince of the Blood, Titular King of *Jeruſalem*, *Sicily* and *Arragon* (called by *Speed* and [2] *Collier* King of *Naples*); ſhe was a Woman of an active ſtirring Spirit. After the Battle of *Towton* ſhe was obliged, together with her Son, Prince *Edward*, to go into *France* for Shelter: Afterwards, being taken Priſoner at the Battle of *Tewksbury*, and carried to *London*, ſhe remained in Durance, till Duke *Rayner*, her Father, purchaſed her Liberty; but, at ſo dear a Rate, as he was forced to ſell to *Lewis*, the French King, the Kingdoms of *Naples*, and both the *Sicilies*: She returned to him, and died at laſt in her Native Country. *Speed* 697. (82) *Mezeray* 467. *Kennett*, I. 435. 454. *Eachard*, I. 493, 523. *Comines* 631. *Rapin*, VI. p. 93. 94. 119. 134. 137. 377.

(c) The Prince, as is related above, went into *France* with his Mother: After the Battle of [4] *Tewksbury*, Proclamation was made, That whoſoever could bring forth Prince *Edward*, Alive or Dead, ſhould have an Annuity of One hundred Pounds, during Life, "and the Prince's Life to be "ſaved, if he were brought forth alive:" Being brought into the Preſence of *Edward* IV. He queſtioned him, what Mad Perſwaſion had made him take up Arms againſt him, where the very Attempt was Rebellion: To whom, with a Reſolution worthy of a Prince, He replied, "That he "had taken up Arms to recover his Father's Crown and Kingdom, which was violently uſurped, "and that it was a Claim acknowledged by the Approbation, not only of the Kingdom, but of "the World." This Reſolute Anſwer provoked King *Edward* IV. ſo much that he cruelly ſmote him on the Face with his Gauntlet, and then crook-back'd *Richard*, and the Duke of *Clarence*, with others, ſtabb'd him to the Heart, even in the King's Preſence, and at his Feet; contrary to the expreſs Tenor of his Proclamation [5]. Hiſtorians give this Young Prince the Character of a comely Perſon, an happy Compoſition of Body, Fair and well proportioned, Lovely Youth. [6] *Polydore Virgil* calls him a moſt excellent Young Man [*Adoleſcens præſtantiſſimus*] of a Sweet Diſpoſition, and a Prince of Great Hopes, brave, bold, and of a daring Courage. He was born October 13th, 1453. and murdered A. D. 1471. in the Eighteenth Year of his Age. [7] Mr. *Habington* writes of him thus, "Of whom we can make little Mention, his Youth having performed no-"thing worth Story, tho' it promiſed much. In the laſt Scene of Life He acted alone and brave-"ly; Poſterity laments his Misfortune, and applauds the Juſtice of the Almighty in the Puniſh-"ment of his Murtherers." It being Hiſtorically True, That all came to violent Ends: *Gliſter* being the Executioner of the reſt, and of him, the Earl of *Richmond*, the next ſurviving Kinſman of the Butcher'd Prince. *W.* 147. *Rapin*, VI. p. 129. *Sir Wa. Raleigh* Pref. to his Hiſt. World. *Camden* 234.

(d) King *Henry* VI. was an unhappy Prince, firſt, as a [8] Minor, being but nine Months old when he came to the Throne: Then, in his Marriage with a Woman of the French Blood and Intereſt; She being a Niece to the Queen of *France*: He was engaged in Troubles and Wars the moſt Part of his Reign. The Wars continued about 16 Years, at Times, The Pretenſions being for

[1] p. 713. [2] Great Hiſt. Dict. [4] *Stowes'* Annals 424. *Holinſhed* 688. [5] Scandalous Chronicle, Pr. at the End of *Comines*. *Speed* 697. (73) *Baker* 213. *Kennett* 453. *Eachard*, I. 540. *Comines*. [6] Ed. *Lugd. Bat.* 1651. p. 673. [7] Life of *E.* IV. [8] *Nicholſon*, III. p. 27.

her Son, being thus baniſhed, made her Abode in the Dutchy of *Berry*, which at that Time belonged to her Father, the King of *Jeruſalem*.

The Prince, as he grew up to Man's Eſtate, applied himſelf wholly to Martial Exerciſes; and being often mounted on Fiery and Wild Horſes, which he did not fear to urge on with the Spur, made it his Diverſion, ſometimes with his Lance, ſometimes with his Sword, or other Weapons, to attack and aſſault the Young Gentlemen his Attendants, according to the Rules of Military Diſcipline: Which a certain grave (e) old (f) Knight, his Father's Chancellor, at that ſame Time in Baniſhment with him, perceiving, thus accoſts the Prince.

for good Government. The Field was quiet for about four Years, after which the Clamour of ill Government revived, and at the ſame Time, a Claim to the Crown, ſet up by the Houſe of *York*; upon which the Wars grew hot for about four Years more, and a Ceſſation of as many: After which, at the End of Two Year's War, ended the Quarrel with the Death of [9] Eighty Princes of the Blood Royal, and the Murder of the King, in near the 50th Year of his Age, of which he reigned 38 Years, toſſed with infinite Mutation of Fortune; twice impriſoned and deprived of his Crown. A. D. 1455. After the Battle of St. *Albans*, the Duke of *York* and the Earls of *Warwick* and *Salisbury*, conveyed the King, with great Appearance of Reverence, to *London*, 1460. He was taken in the Battle of *Northampton* and conveyed a Priſoner again to *London*, the very next Year, in the ſecond Battle of St. *Albans*, which was the 6th in this Quarrel, the King was ſet at Liberty. 1463 (3 *Ed.* IV.) after the Battle of *Hexam*, where the *Yorkiſts* were victorious, the King fled into *Lancaſhire*, was taken in *Waddington-Hall* near *Cleatherwood*, and carried to *London* in a diſgraceful Manner, with his Legs bound under the Horſe's Belly, and made Priſoner. 1469, *Warwick* comes to *London*, and delivers King *Henry* out of Priſon. 1471, *Edward* IV. enters *London* and again impriſons the King. The ſame Year the Queen, with Prince *Edward*, Land at *Weymouth* with Forces, fought the Battle at *Tewksbury*, and were both taken Priſoners. The ſame Year *Henry* VI. was murdered. Mr. *Collier* ſays, the King had been kept a Priſoner in the *Tower* Nine Years, and releaſed by the Earl of *Warwick*. *Holinſhead, Speed, Baker, Kennet, Eachard, N. Bacon* — The Contin. Chap. XIII. V. Mr. *Bayle* Art. *Ed.* IV. *Rapin* V. p. 341. 388.

(e) * *Grandævis* oppida Curæ— [10] *Virg.* Grandævus Nereus. *ib.* * *Senioribus* — *Pomponius Sabinus. Virg.* Ed. *Servii* Baſil. 1586. p. 331.

(f) *Miles*] At the Time, probably, when our Author wrote, this was the Higheſt Rank of the Lower Nobility, an Honour given to Men of Merit. Bare Knighthood is not without its dignified Luſtre, in Point of its Riſe, Antiquity and Univerſality of Allowance. In our Laws it is accounted a Noble Degree, and of a Thouſand Years ſtanding. [11] *Brompton*, in his Mention of *David*, King of *Scots* coming into *England* in King *Stephen*'s Time, ſays, *Contra quem Milites & Principes* Angliæ *Boreales reſtiterunt.* W. [12] *Henricus de Bathonia*, Miles Literatus, *Legum Terræ peritiſſimus, Domini R. Juſticiarius & Conſiliarius Specialis.* [13] *Quidam* Miles Literatus, *Robertus de La Ho, cui Rex commiſerat tutelam* Judæorum *& Sigilli ſui, quod ad Scaccarium eorundem pertinet* — Milites iſti Literati, *ii ſunt, quos noſtri, Chevaliers en Loix*, vocabant, i. e. *Qui, cùm Gente Nobiles eſſent, Legum ſtudiis Operam impenderant, ut in ſupremis Regum Foris jus dicerent: quouſque inde Dominos Legum appellatos. Auctor eſt* Du Chene in Hiſt. Gandenſi. IX. 3. *Occurrunt iidem* Milites Legum *apud* Monſtrelletum, *& alibi. Du Freſne* ad v. Miles v. 2. *Inſt.* 594. **Camd.** CLXXXII. **Spelm. Reliq.** 173. 179. 182. *Le Clerc.* Bibl. Univerſ. I. p. 212.

---

[9] *Comines*, L. I. chap. VII. p. 67. Note b. ib. p. 521. [10] G. IV. 178. 392. [11] X. *Script.* 1026. [12] *Matth. Paris* 701. [13] ib. 737.

DE

Laudibus Legum Angliæ.

CHAP. I.

An Exhortation to the Study of the Laws.

I AM right glad, moſt ſerene Prince, at that worthy (a) Genius of Your's, whilſt I obſerve with how great an (b) Inclination You employ your ſelf in ſuch Manly and (c) Martial Exerciſes; which become You, not ſo much as You are a Soldier, as, that one Time or other, (d) You will be our King. For it is the Duty of a King to Fight the Battles of his People, and to Judge them in Righteouſneſs. (1 *Kings* VIII. 20.) Wherefore, as You divert and employ your ſelf ſo much in Feats of Arms, ſo I could wiſh to ſee You Zealouſly affected towards the Study of the Laws; becauſe, as Wars are decided by the Sword, ſo the Determination of Juſtice is effected by the Laws: Which the Emperor *Juſtinian* wiſely conſidering, in the very Beginning of the Introduction to his Inſtitutes, ſays, " It is not only incumbent upon the Imperial Maje-
" ſty to be graced with Arms, but alſo to be fenced about with the
" Laws: That he may know how to govern aright, both in Times

(a) It is difficult to expreſs by any one Word which occurs in our Language that which is underſtood by, *Indoles*; in Latin it imports a natural Diſpoſition in General, or, in particular, to any Art, Science, Profeſſion, or Trade " Cæſaris Pueri mirifica Indoles Virtutis] *Virtutem Viris Attribuimus, Indolem Pueris & Adoleſcentibus.* P. *Manut.* in [1] *Cic.*— *Virtutis Indoles* — [2] De *Offic. Summa Ingenii Indoles.* [3] Ib. *ad Virtutem Major Indoles.* [4] Ib. *Fac fuiſſe in iſto Lælij Indolem.* [5] Ib. *Adoleſcens Lætæ Indolis.* [6] A. *Gell. Optimæ Indolis Juveni*] Spei. *Eſt autem* Indoles *Virtutis indicium in Adoleſcente.* V. *Val. Max.* de Indole. *Livius*, numeratis *Annibalis* Virtutibus & Vitiis, ſuperaddit, " Cum hac *Indole* Virtutum ac Vitiorum Triennio ſub *Aſdrudale* Imperatore meruit. " *Plin. Epiſt.* L. 2. Ep. VI. p. 93.

(b) *Inexhauſta* Aviditas *legendi* [7]. Cic. *Infinita in te* aviditas *Gloriæ.* Cic. Ep. ad Q. Fratrem. L. I. Ep. I. XVI.

(c) That is, inuring himſelf to Toils and Hardſhips, fixing his Mind againſt Fear, and provoking Attempts. Juſts, Barriers, Tournaments, Tilting, &c. were at that Time the faſhionable princely Recreations. W.

(d) I am directed, ſays Mr. *Waterhouſe*, on this Occaſion to mention the Dawning of Greatneſs in *Alexander*, who, being asked in his Youth to contend for a Prize in the *Olympic* Games, anſwered, He would, if he had Kings to run againſt him. " [8] *Plutarch* tells us, the *Ægyptian* Kings were always declared either out of the Prieſthood or Soldiery; the Latter having a Right of Primogeniture by Reaſon of their Military Valour, the former by Reaſon of their Wiſdom. " Habet Rex in Manu ſua *omnia jura* quæ ad Coronam & Laicalem pertinent poteſtatem, & *materialem Gladium* qui pertinet ad regni Gubernaculum. *Fleta*, L. 1. Cap. 17. § 3. W.

---

[1] Ad. *Brut.* Ep. III. [2] 3. IV. [3] *Philipp.* II[a] XIII. [4] *Orator* ad M. *Brut.*
[5] In *Verr.* L. 3. Act. 2. Ed. *Manucc.* 213. *Græv.* 68. [6] 19. IX. [7] De *Fin.* 3. II.
[8] v. *Mor.* Eng. Vol. 4. p. 74.

her Son, being thus baniſhed, made her Abode in the Dutchy of *Berry*, which at that Time belonged to her Father, the King of *Jeruſalem*.

The Prince, as he grew up to Man's Eſtate, applied himſelf wholly to Martial Exerciſes; and being often mounted on Fiery and Wild Horſes, which he did not fear to urge on with the Spur, made it his Diverſion, ſometimes with his Lance, ſometimes with his Sword, or other Weapons, to attack and aſſault the Young Gentlemen his Attendants, according to the Rules of Military Diſcipline: Which a certain grave (e) old (f) Knight, his Father's Chancellor, at that ſame Time in Baniſhment with him, perceiving, thus accoſts the Prince.

for good Government. The Field was quiet for about four Years, after which the Clamour of ill Government revived, and at the ſame Time, a Claim to the Crown, ſet up by the Houſe of *York*; upon which the Wars grew hot for about four Years more, and a Ceſſation of as many: After which, at the End of Two Year's War, ended the Quarrel with the Death of [9] Eighty Princes of the Blood Royal, and the Murder of the King, in near the 50th Year of his Age, of which he reigned 38 Years, toſſed with infinite Mutation of Fortune; twice impriſoned and deprived of his Crown. A. D. 1455. After the Battle of St. *Albans*, the Duke of *York* and the Earls of *Warwick* and *Salisbury*, conveyed the King, with great Appearance of Reverence, to *London*, 1460. He was taken in the Battle of *Northampton* and conveyed a Priſoner again to *London*, the very next Year, in the ſecond Battle of St. *Albans*, which was the 6th in this Quarrel, the King was ſet at Liberty. 1463 (3 *Ed.* IV.) after the Battle of *Hexam*, where the *Yorkiſts* were victorious, the King fled into *Lancaſhire*, was taken in *Waddington-Hall* near *Cleatherwood*, and carried to *London* in a diſgraceful Manner, with his Legs bound under the Horſe's Belly, and made Priſoner. 1469, *Warwick* comes to *London*, and delivers King *Henry* out of Priſon. 1471, *Edward* IV. enters *London* and again impriſons the King. The ſame Year the Queen, with Prince *Edward*, Land at *Weymouth* with Forces, fought the Battle at *Tewksbury*, and were both taken Priſoners. The ſame Year *Henry* VI. was murdered. Mr. *Collier* ſays, the King had been kept a Priſoner in the *Tower* Nine Years, and releaſed by the Earl of *Warwick*. *Holinſhead, Speed, Baker, Kennet, Eachard, N. Bacon* — The Contin. Chap. XIII. V. Mr. *Bayle* Art. *Ed.* IV. *Rapin* V. p. 341. 388.

(e) * *Grandævis* oppida Curæ— [10] *Virg.* Grandævus Nereus. *ib.* * *Senioribus* — *Pomponius Sabinus. Virg.* Ed. *Servii* Baſil. 1586. p. 331.

(f) *Miles*] At the Time, probably, when our Author wrote, this was the Higheſt Rank of the Lower Nobility, an Honour given to Men of Merit. Bare Knighthood is not without its dignified Luſtre, in Point of its Riſe, Antiquity and Univerſality of Allowance. In our Laws it is accounted a Noble Degree, and of a Thouſand Years ſtanding. [11] *Brompton*, in his Mention of *David*, King of *Scots* coming into *England* in King *Stephen*'s Time, ſays, *Contra quem Milites & Principes* Angliæ *Boreales reſtiterunt.* W. [12] *Henricus de Bathonia*, Miles Literatus, *Legum Terræ peritiſſimus, Domini R. Juſticiarius & Conſiliarius Specialis.* [13] *Quidam* Miles Literatus, *Robertus de La Ho, cui Rex commiſerat tutelam* Judæorum *& Sigilli ſui, quod ad Scaccarium eorundem pertinet* — Milites iſti Literati, *ii ſunt, quos noſtri, Chevaliers en Loix*, vocabant, i. e. *Qui, cùm Gente Nobiles eſſent, Legum ſtudiis Operam impenderant, ut in ſupremis Regum Foris jus dicerent: quouſque inde Dominos Legum appellatos. Auctor eſt* Du Chene in Hiſt. Gandenſi. IX. 3. *Occurrunt iidem* Milites Legum *apud* Monſtrelletum, *& alibi. Du Freſne* ad v. Miles v. 2. *Inſt.* 594. **Camd.** CLXXXII. **Spelm. Reliq.** 173. 179. 182. *Le Clerc.* Bibl. Univerſ. I. p. 212.

---

[9] *Comines*, L. I. chap. VII. p. 67. Note b. ib. p. 521. [10] G. IV. 178. 392. [11] X. *Script.* 1026. [12] *Matth. Paris* 701. [13] ib. 737.

DE

Laudibus Legum Angliæ.

CHAP. I.

An Exhortation to the Study of the Laws.

I AM right glad, moſt ſerene Prince, at that worthy (a) Genius of Your's, whilſt I obſerve with how great an (b) Inclination You employ your ſelf in ſuch Manly and (c) Martial Exerciſes; which become You, not ſo much as You are a Soldier, as, that one Time or other, (d) You will be our King. For it is the Duty of a King to Fight the Battles of his People, and to Judge them in Righteouſneſs. (1 *Kings* VIII. 20.) Wherefore, as You divert and employ your ſelf ſo much in Feats of Arms, ſo I could wiſh to ſee You Zealouſly affected towards the Study of the Laws; becauſe, as Wars are decided by the Sword, ſo the Determination of Juſtice is effected by the Laws: Which the Emperor *Juſtinian* wiſely conſidering, in the very Beginning of the Introduction to his Inſtitutes, ſays, " It is not only incumbent upon the Imperial Maje-
" ſty to be graced with Arms, but alſo to be fenced about with the
" Laws: That he may know how to govern aright, both in Times
" of

(a) It is difficult to expreſs by any one Word which occurs in our Language that which is underſtood by, *Indoles*; in Latin it imports a natural Diſpoſition in General, or, in particular, to any Art, Science, Profeſſion, or Trade " Cæſaris Pueri mirifica Indoles Virtutis] *Virtutem Viris Attribuimus, Indolem Pueris & Adoleſcentibus.* P. *Manut.* in [1] *Cic.*— *Virtutis Indoles* — [2] De *Offic. Summa Ingenii Indoles.* [3] Ib. *ad Virtutem Major Indoles.* [4] Ib. *Fac fuiſſe in iſto Lælij Indolem.* [5] Ib. *Adoleſcens Lætæ Indolis.* [6] A. *Gell. Optimæ Indolis Juveni*] Spei. *Eſt autem* Indoles *Virtutis indicium in Adoleſcente.* V. *Val. Max.* de Indole. *Livius*, numeratis *Annibalis* Virtutibus & Vitiis, ſuperaddit, " Cum hac *Indole* Virtutum ac Vitiorum Triennio ſub *Aſdrudale* Imperatore meruit. " *Plin. Epiſt.* L. 2. Ep. VI. p. 93.

(b) *Inexhauſta* Aviditas *legendi* [7]. Cic. *Infinita in te* aviditas *Gloriæ.* Cic. Ep. ad Q. Fratrem. L. I. Ep. I. XVI.

(c) That is, inuring himſelf to Toils and Hardſhips, fixing his Mind againſt Fear, and provoking Attempts. Juſts, Barriers, Tournaments, Tilting, *&c.* were at that Time the faſhionable princely Recreations. W.

(d) I am directed, ſays Mr. *Waterhouſe*, on this Occaſion to mention the Dawning of Greatneſs in *Alexander*, who, being asked in his Youth to contend for a Prize in the *Olympic* Games, anſwered, He would, if he had Kings to run againſt him. " [8] *Plutarch* tells us, the *Ægyptian* Kings were always declared either out of the Prieſthood or Soldiery; the Latter having a Right of Primogeniture by Reaſon of their Military Valour, the former by Reaſon of their Wiſdom. " Habet Rex in Manu ſua *omnia jura* quæ ad Coronam & Laicalem pertinent poteſtatem, *& materialem Gladium* qui pertinet ad regni Gubernaculum. *Fleta*, L. 1. Cap. 17. § 3. W.

---

[1] Ad. *Brut.* Ep. III. [2] 3. IV. [3] *Philipp.* II[a] XIII. [4] *Orator* ad M. *Brut.*
[5] In *Verr.* L. 3. Act. 2. Ed. *Manucc.* 213. *Græv.* 68. [6] 19. IX. [7] De *Fin.* 3. II.
[8] v. *Mor.* Eng. Vol. 4. p. 74.

" of Peace and of War." As an Inducement to (f) ſet your ſelf in good Earneſt about the Study of the Laws, the greateſt (g) Lawgiver of his Time, *Moſes*, formerly Chief of the Congregation of the People of *Iſrael*, invites You more effectually than *Juſtinian*, when, by Divine Inſpiration, he commands the Kings of *Iſrael* to read the Laws all the Days of their Life, ſaying thus: " It ſhall be " when he ſitteth upon the Throne of his Kingdom, that he ſhall " (h) write him a Copy of this Law in a Book, out of that which " is before the *Prieſts*, the *Levites*; and it ſhall be with him, and " he ſhall read therein all the Days of his Life, that he may Learn " to fear the Lord his GOD, to keep all the Words of this Law, " and theſe Statutes to do them, (*Deut.* XVII. 18, 19.)" (i) *Helynandus*, upon the Place, ſays, " A Prince therefore (k) ought not, " neither is he permitted, under the Pretence of his Duty as a Sol- " dier, to be ignorant of the Laws. —— A little after he is com- " manded to take a Copy of the Law from the *Prieſts* and *Levites*,

(f) *Anhelo*— To labour to come to a Thing, to aſpire unto. *Anhelans* Crudelitatem. *Cic.* Rhet. ad *Herenn.* L. 4. LV.

(g) [10] *Diodorus Siculus*, amongſt the Law-makers reckons *Moſes*, in the *Jewiſh* Nation, and that he vouched the God *Jao* to be the Author of his Laws. In another Place, he has it, [11] *Moſes*, Auditor Dei, hæc dicit *Judæis*. In another Place he calls him, [12] a very wiſe and valiant Man. [13] *Longinus* calls *Moſes*, ὁ τῶν Ιυδαίων νομοθέτης ἐχ ὁ τυχὼν ἀνὴρ—Le Legiſlateur des *Juifs* qui n'eſtoit pas un Homme Ordinaire. That, which made him the greateſt of Lawgivers, was, his Miniſtration to the Promulgation of the Moral Law, his being in the Mount with GOD [14] forty Days. His Knowledge of the Mind of GOD in all the Latitude of his Commiſſion, and his Fidelity in doing every Thing according to the Preciſeneſs of the Truſt repoſed in him: His Laws ſurpaſſed all other Laws, in that they abode the Teſt and Terror of Conqueſt, and remain to the *Jews* the ſame that they were, even to this Day. W. The Jewiſh Law is called *Moſes*' Law in ſeveral Places of the Scriptures. Of thoſe who have been moſt famous for making Laws in ſeveral Nations, *Moſes* may be very well ranked in the firſt Place. *Dugd.* 3. a. 1 *Inſt.* 394. b. Dr. *Hody* de LXX. Interp. L. 2. p. 101. 102. *Strabo*, L. 16. *Fabric.* Bibl. *Gr.* To. 3. p. 17.—To. IX. p. 845. Dr. *Jenkin* of the Chriſtian Religion I. Pt. II Chap. 3. ib. II. 195. *Suidas* * To. 1. p. 3. 183. V. Ἀνάϛημα. ib. 556. *Ecclus.* c. 45 Lock, III. 265. Wiſeman 186, 7.

(h) He ſhall write him a Copy of the whole Law with his own Hand: He was not to write by Memory, or out of any private Man's Copy, but out of the Book which was in the Sanctuary, where the Original and uncorrupted Copy was: And it was to be with him whereſoever he was, either in the Camp, or at home. *Patrick* Com. ad Loc. *Aquinas* p. 85. v. Domat. Vol. 2. p. 15. a. Joſhua, c. 1. v. 8.

(i) *Helynandus* was a French Monk of the Order of the *Cluniacenſes:* He lived about the Year 1200. [15] *Poſſevinus* ſays, he wrote many Things. [16] *Vincentius Beluacenſis* alſo writes of him. W. He was a Monk of *Froimond* in the Dioceſe of *Beauvais*, towards the End of the 12th Century, and the Beginning of the 13th. " Helinandus vix. ſub Philippo Aug. Ejus Chronic. edit. in Bib- " lioth. Ciſtercienſi." *Du Freſne's* Index.

(k) Without the Qualification here required a Ruler can't be juſt, the Subject Happy, the Government durable, or a Governour renowned. [17] *Comines* ſays, " I cannot forbear blaming Illi- " terate Princes, who generally are led by the Noſe by certain Lawyers and Prieſts, which they " keep commonly about them. Theſe have always ſome Law or *Precedent* in their Mouths, " which they wreſt and pervert as they pleaſe; But a Wiſe Prince, One who has read Hiſtory, " ſhall never be deluded; no Courtier will be ſo audacious as to tell a Lie in his Preſence. Upon " the Whole, I am of Opinion, that GOD cannot ſend a greater Curſe or Affliction upon a Nation " than an unlearned or inconſiderate Prince; from hence all other Misfortunes and Miſeries ariſe.— This is very legible in our own Hiſtory under the Reigns of King *John*, *Edward* II. *Richard* II. King *Henry* VI. King *Charles* I. and King *James* II. in whom may be ſeen nothing but the Weakneſs and Poverty of the Prince, not being guided by the Laws. They had Reigns of War and Tumult, and were brought to miſerable Periods. W. v. *Boet.* Var. p. 23. *Vopiſc.* Hiſt. *Aurelian.* quoted in Cato's Letters, Vol. 1. p. 91. Hiſt. Ang. Script. II. 531, 2.

---

[10] Ed. *Rhod.* p. 59. *Booth*'s Tranſl. p. 49. [11] Eclogæ ex Lib. XL. Chron. *Diodor. Sic.* Rhod. 8°. Hanoviæ, M.DC.XI. p. 1191. *Booth* 736. [12] Fragm. out of 34th Book *Diodor. Sic. Booth* 726. v. Bibl. Hiſt. L. I. p. 84.— Ed. Lat. Fo. p. 43. [13] Edit. *Hudſon* 28. *Fabric.* Bib. *Gr.* IV. 442. *Boileau* (Ed. *Amſt.* 1677.) Chap. VII. p. 122. [14] *Exod.* XXXI. 18.—XXXII. 16. XXXIII. 11.—XXXIV. 28. *Deut.* IX. 10. *John* I. 17. *Acts* VII. 22. * To. 2. p. 100. [15] In Apparatu Sacro p. 721. [16] In Speculo Hiſtoriali 30. 108. v. *Le Pere Labbe* de Script. Eccleſ. T. 2. p. 275. Mr. *Bayle* ad Art. *Radulphe*, Note 6. under the Text. [17] p. 158, 9.

" that is, from Catholic and Learned Men," Thus He. *Deuteronomy* is the Book of Laws whereby the Kings of *Iſrael* were obliged to govern the People committed to their Charge: *Moſes* commands their Kings to read this Book, that they may learn to fear the Lord their GOD, and keep his Statutes which are written in the Law. Behold, to fear GOD is the Effect of the Law, which a Man cannot attain to, unleſs he firſt know the Will of GOD as it is written in the Law. For, the Principal, the Chief Point of Obedience, is to know the Will of that Maſter whom we are to ſerve and obey: And yet *Moſes* here in this Edict of his, mentions the Effect of the Law firſt, *viz.* The Fear of GOD, and then exhorts to the Keeping the Commands of GOD, which are the Cauſe of that Fear; for the Effect is always prior to the Cauſe in the Intention of the Perſon who exhorts. But what kind of Fear is that which the Laws propoſe to the Keepers thereof? Sure it can't be that Fear, of which it is written (l) (1 *John* IV. 18.) that perfect Love caſteth out Fear. Yet that Fear, tho' it ſeems a ſervile Fear, often ſtirs up Kings to read the Laws. But this is not the Effect of the Law: The Fear which *Moſes* here intends, and which the Laws produce, is that deſcribed by the Prophet, " The Fear of the Lord is clean, enduring for ever. (*Pſal.* XIX. 9.) This Fear is Filial and quite excludes that ſervile Dread and Horror, which *that* hath which is caſt out by Love. This proceeds from the Laws, which teach to do the Will of GOD, in the doing whereof we ſhall eſcape all Puniſhment. " (m) The Glory " of the LORD (ſay the *Scriptures*) is upon them that fear him, " whom alſo he Glorifieth:" In a Word, this Fear is the ſame which *Job* ſpeaks of, when, after he had turned his Thoughts many Ways in ſearch after Wiſdom, He gives us this, as the Reſult of his Enquiry; " Behold the Fear of the LORD, that is Wiſdom, and " to depart from Evil is Underſtanding," [*Job* XXVIII. 28.] to depart from Evil, the *Laws* teach and caution; *whereby* they alſo produce that Fear of GOD, which is the true Wiſdom.

(l) [18] Mr. *Butler* handles this Text of St. John very diſtinctly. So does Biſhop *Hoadly*, Sarum, in his Queries on Free-thinking. *Tracts* (8° Lond. 1715.) p. 437.
(m) *Pſ.* XXXIII. 18. XXXIV. 15. *Job* XXXVI. 7. 1 *Pet.* III. 12.

[18] Diſcourſes at the Rolls, 8°. Lond. 1726. p. 274. Dr. *Jenkins*'s Reaſonableneſs of the Chriſtian Religion, V. 1. Pt. 2. c. 18. p. 304.

CHAP. II.

The Prince's Anſwer.

WHEN the Prince heard this, looking very † intently at the old Knight, He replied, I know, Good Chancellor, that the Book of *Deuteronomy* is a Part of the Holy Scriptures, that the Laws

† Nos in his Miſeriis *erecto* animo, & minime perturbato ſumus. [1] Cic. *Erectum* alacri & prompto ore, ac vultu. ib. Populum Romanum ad ſpem recuperandæ Libertatis *erectum*. ib. *Erectus* maximi

[1] Epiſt. ad. *Att.* II. 24.—de Oratore I. 40.— *Philipp.* 3ª. XIII.—4ª. V.—1ª. IV.— pro R. *Deiotaro* XIII.

Laws and Ceremonies contained therein are of Divine Inſtitution and promulged by *Moſes*; upon which Account the Reading of them is Matter for a Pious and Devout Contemplation: But the Law, to the Study and Underſtanding whereof you now invite me, is merely Human, derived from Human Authority, and reſpects this World: Wherefore, tho' *Moſes* obliged the Kings of Iſrael to the Reading of the *Deuteronomical* Law, it does not thence reaſonably follow, that by the ſame Rule He invites all other Kings to do the like as to the Laws of their reſpective Dominions: The Reaſon of the Study of the one, and of the other, is not ſtrictly the ſame.

maximi ac pulcherrimi Facti Conſcientia. ib. magno animo & *erecto* eſt. ib. By *Erecto vultu*, our Author may mean what others do by the moſt Benign Epithets, as *Placido Lumine* (Hor. L. 4. O. 3.) Ingenium ſœlix, facile, *erectum*, acre, vividum, mirum & prope inſitum decori Studium.

CHAP. III.

The Chancellor enforceth his Exhortation.

Chancellor. I Obſerve, moſt excellent Prince, from your reply, with what Care and Attention you weigh the Nature of my Advice, which encourages me very much, not only to explain more clearly, but to enter ſomewhat deeper into the Matters I have begun and propos'd to you; Be pleaſed to know then, that not only the *Deuteronomical*, but alſo all Human Laws are ſacred; The Definition of a Law being thus, (a) " It is an Holy Sanction, " commanding whatever is Honeſt, and forbidding the Contrary." And that muſt needs be Holy, which is ſo in its Definition. (b) The Law or Right is alſo defined " to be that, which is the (c) Art of " what is Good and Equal;" or, the Law conſidered as a Science or Profeſſion, may aptly be defined in the ſame Manner. Whence we, who are the Miniſterial Officers, who ſit and preſide in the Courts of Juſtice, are therefore not improperly (d) called, *Sacerdotes*, (Prieſts)

(a) All Laws which derive their Force *à Lege Naturæ* (and thoſe which do not are no Laws) and are Honeſt, Juſt, Poſſible, according to the Cuſtom of Places and Times, which are Advantagious and Plain: When they anſwer the End of their Inſtitution, and are conformable to the Principle whence they actuate; theſe, tho' Human, in regard of their Makers, yet are ſacred and refer to GOD, as their Great Author. W. " Qua Lege? quo Jure? eo quod Jupiter ipſe ſanxit, ut " omnia quæ Reipub. Salutaria eſſent, Legitima & juſta haberentur. Eſt enim Lex nihil aliud niſi recta & a numine Deorum tracta Ratio, imperans Honeſta, prohibens contraria. [1] Cic. Lex nulla " eſt Lex, niſi Reipub. causâ ſcripta. [2] Ib. Lex eſt Ratio Summa, inſita in Natura, quæ jubet " ea, quæ facienda ſunt, prohibetq; contraria. [3] ib. Leges inſtitutæ per Principes, idem habent " initium, ſc. ex jure Naturæ, aliàs juſtæ Leges non eſſent." [4] Things have no Name above their Nature, but anſwerable to it: Or, in other Words, Things ought in Nature to anſwer their Definitions. W. *Grot.* L. 1. c. 1. x. Sharrock, 8°. Lond. 1682. p. 120.

(b) There are Great Men who criticiſe between *jus* and *Lex:* The Learned *Grotius* [5] does not approve of it, but ſhews that they are promiſcuous in their Uſe: I take it, that in the preſent Inſtance, the Words are uſed in their largeſt Extent and Acceptation, and intend the Law under the Conſideration of a Science or Profeſſion W. v. *Opuſculum de naturâ Legis Naturæ.* c. xxx. *Puffendorf.* p. 10. (f)

(c) This is the Definition of *Celſus*, and *Ulpian* quotes it from him. W.

(d) *Quis nos* Sacerdotes *appellat*] *Quis* indef. pro *aliquis*. The Perſon here intended, according to Mr. *Waterhouſe*, is, *Domitius Ulpian*, the Famous Lawyer, in the firſt of his Inſtitutes. *Servius Sulpitius*

[1] *Philipp.* II. XII. [2] De Inventione, I. 38. [3] De Legibus, I. 6. — Ed. *Davis* p. 22. Note 3. — ib. *Turneb.* Com. 268. — *Verburg.* IV. 1197. a. [4] *Aquinas* p. 157. v. *Bract.* L. I. c. 3. [5] De jure I. I. IX.

(Prieſts): The Import of the Latin Word (*Sacerdos*) being one who gives or teaches Holy Things; and ſuch are all Laws which are ſolemnly enacted and promulgated, tho' made by Men: Seeing the *Apoſtle* ſays, (*Rom.* XIII. 1.) that all Power is from GOD. Laws which are made by Men, (who for this very End and Purpoſe receive their Power from GOD) may alſo be affirmed to be made by GOD, as ſaith the Author of a Book, going under the Name of (1)e. *Auctor Cauſarum*, whatſoever the Second Cauſe doth, that doth the firſt Cauſe, but in a more excellent Manner. Wherefore King *Jehoſaphat* ſays to His Judges (f) (2 *Chron.* XIX. 6.) " Take " heed what you do, for Ye judge not for Man, but for the Lord, " who is with you in the Judgment:" Whereby you are inſtructed, that to ſtudy the Laws, tho' of Human Inſtitution, is in effect to ſtudy the Laws of GOD; which therefore can't but afford a Pious and Devout Entertainment. But neither was it out of Devotion only (as you rightly Judge) that *Moſes* commanded the Kings of *Iſrael* to read the Book of *Deuteronomy* (g) rather than any other Part of the *Pentateuch*, ſince all of them abound in Matter for a Devout and Holy Contemplation; to meditate in which is the Part of every Good Man: The true Reaſon of this Command is, that in the Book of *Deuteronomy*, the Laws, whereby the Kings of *Iſrael* were obliged to govern their Subjects, are more expreſly, more explicitely particularized than in any other of the Books of the Old Teſtament, as the Circumſtances of the Command do plainly evince. Wherefore, my Prince, the ſame Cauſe does no leſs exhort you than the Kings of *Iſrael*, that you ought to be a ſtudious Enquirer into thoſe Laws, whereby you may be hereafter qualified to govern your Subjects. For, what is ſaid to the Kings of *Iſrael* muſt be figuratively intended to be ſpoken to every King who bears Rule over a People, who know and worſhip the True GOD. Upon the Whole, cou'd any Thing be more fitly or more uſefully offered to your Conſideration, than this Command enjoined to the Kings of *Iſrael*, to read and ſtudy their Law? Since, not only the Example, but the Typical Authority thereof inſtructs and obliges you to behave conformably to the Laws of that Kingdom, to the Crown whereof, with the Permiſſion of Divine Providence, you are in due Courſe of Time apparently to inherit.

Sulpitius appellatus eſt Antiſtes juris. [6] " Amongſt the Ancient Gauls, the Druids or Clergy, " were Arbitrators of all Differences, if any Perſon were killed, if the Controverſy related to Ti- " tles of Land, or the Extent of Confines, the Druids were the Judges whoſe Sentence muſt decide " the Matter. Theſe are They who muſt pronounce Rewards and Puniſhments. —— Once a " Year they have a General Rendezvous at a Conſecrated Place ſet a-part for that Purpoſe, in the " Confines of *Chartres*; hither flock all ſuch as have any Controverſies to decide, and ſubmit to " their Decrees." Cæſ. Com. de B. G. VI. XIII. Mr. *Bladen*, p. 98. *Aquinas* 82. *Seld.* Opp. To. 2. 1054. II. Poſt. Cap. 17. Note 6. v. *Buchanan.* de jure regni 201 Sacerdotes Juſtitiæ, Prieſts of Juſtice *.

(1) e. *Auctore Cauſarum*,] Queſtionleſs he meant the Author of the little Book *de Cauſis*, put in ſome *Latin* Editions at the End of *Ariſtotle*'s Works, with ſome other ridiculouſly attributed to *Ariſtotle*. There are who think it to be done by ‡ *Alpharabius*, others by *Avempace*, others by *Proclus*. It was turned out of *Hebrew* into *Latin*, but is not extant in *Ariſtotle*'s Language. It is ancient, but clearly beneath the Age of *Ariſtotle*. In *Propoſit.* I. the Subſtance is of what he cites. Mr. *Selden.*

(f) V. *Pſ.* LXXXII. 1. *Deut.* I. 17. 2 *Chron.* IX. 8. v. Dr. Patrick ad Loc.

(g) Thoſe Things which relate to GOD, Man and one's ſelf, being Moral in their Nature, oblige all. W.

[6] *Quintil.* XI. 1. Var. p. 800. v. Dr. *Wilkins* in Vitâ *Seldeni*, IX. * V. Lowth. Ezek. p. 418. Edit. 4to. ‡ *Albumazar, Alpharabius.* V. *Fabric.* Bibl. *Gr.* To. 2. p. 116.

CHAP. IV.

A Prince by the Laws may be made happy.

THE (a) Laws, My (b) Dear Prince, don't only, with the Prophet, ſaying, "Come Ye Children, hearken unto me, "I will teach You the Fear of the Lord," (*Pſ.* XXXIV. 11.) call on you to fear GOD, whereby you may become Wiſe; but the ſame Laws alſo invite you to be exerciſed in them, that you may attain to Felicity and Happineſs (as far as they are attainable in this Life). For all the (c) *Philoſophers*, who have argued ſo differently about Happineſs, have agreed in this, that Happineſs is the End of all Human Deſires, for which Reaſon they call it the (d) *Summum Bonum*, the Greateſt or Chief Good: The *Peripatetics* plac'd it in Virtue; the *Stoics* in what is Honeſt; and, the (e) *Epicureans* in Pleaſure: But, inaſmuch as the *Stoics* defined that to be Honeſt which is done well and laudably, according to the Rules of Virtue; and the *Epicureans* aſſerted that nothing is or can be pleaſant without Virtue; All thoſe Sects, according to (f) *Leonardus*

4 *Aretinus*,

(a) The Laws, that is, of Government, as founded upon the Law of GOD, Nature and Nations—— The Laws in their Intention and Meaning have in them the Precepts of Virtue practiſed and Vice abhorred——— The Laws of Government, eſpecially thoſe of *England*. W.

(b) *Colendiſſime*] Amor ac Deliciæ generis humani [1], was the Character of the Emperor *Titus*. And which any other Prince may attain to by a proper Demeanour and Conformity to the Laws. The Chancellor's Compliment in this Place is very well accommodated to his Prince. V. antè, Introduct. Note c.

(c) The Ancient Philoſophers were the *Nomothetæ* amongſt the Greeks: They acknowledged the Sum of all Wiſdom, acquirable by Men, to conſiſt in Felicity and Bleſſedneſs, the adequate End of Virtue, beyond which no Man can, no Man ever did, wiſh. W. They reſolve all Felicity and all Religion into the Calm of a retired Soul; yet fix that Calm upon the Meditations of an upright Mind, and the Calm of a clear Heart.

(d) *Perfectus eſt Status in quo quis ſummam Voti ſui invenit. Sen.* Epiſt. 66. p. 182. Ed. Elz. 1649. *Jenkins*'s Reaſonableneſs of the Chriſtian Religion, Pt. 3. c. 5. p. 348.

(e) [2] *Epicurus* concludes that all Virtue conſiſts in Pleaſure, and to live delightfully is to be happy. All the Sects make up an Harmonious Suffrage, that Virtue only operates Felicity, and Felicity is the perfect Uſe of Virtue. W. *Epicurus* affirms Virtue to be only inſeparable from Pleaſure.—— He who does not live prudently, honeſtly and juſtly, do's not live a Life of Pleaſure [3]. All Virtue either relates to the Government of our ſelves, or others; That which relates to our ſelves is commonly diſtinguiſhed into *Temperance* and *Fortitude*; that which has a Reference to others is ſtiled, *Juſtice:* Both theſe, joined together, go by the Name of *Prudence*. So that Virtue in General is commonly diſtinguiſhed into *Prudence*, *Temperance*, *Fortitude* and *Juſtice*. From theſe Virtues, which are Perpetual Goods, 'tis impoſſible to ſeparate an Happy Life. Whoever lives *Prudently*, *Temperately*, *Valiantly* and *Juſtly*, muſt needs live pleaſantly [4]. What *Epicurus* taught concerning the Nature of the Gods is very Impious. As to his Doctrine touching the *Sovereign Good*, or *Happineſs*, it was very liable to Miſconſtruction, but at the Bottom, very rational, and what no one can deny, taking the Word (*Happineſs*) in the ſame Senſe he did. *Epicurus* lived very exemplarily, conformably to the Rules of the Philoſophical Prudence and Frugality. One can't ſay enough with reſpect to the Honeſty of his Morals, nor bad enough of his Opinions in Religion [5]. "Epicurus *ſtatuit ſummum Bonum in tranquillitate animi ex probâ prodeunte Actione* [6]. *Negat* Epicurus *jucunde poſſe vivi, niſi cum Virtute vivatur* [7]. Cic. *Voluptas cum Honeſtate eſt Bonorum Finis*. Mr. *Woollaſton* quotes [8] *Callipho* for it. Not all Pleaſure, but only ſuch Pleaſure as is true, or Happineſs may be reckoned among the *Fines*, or *Ultima Bonorum*. Woollaſton p. 24.

(f) [9] *Draudius* makes mention of him to his Advantage, as being the Author of many Excellent Books. W. [10] *Collier* ſays, He left a Tranſlation of the Morals of Ariſtotle. *Bruni* (*Leonard*) *Aretine*,

---

[1] *Suetonius*. Titus, c. 1. [2] *Laert.* in *Epicuro* 791. Edit. *Colon.* 1616. [3] *Diog. Laertes*, Eng. V. 2. 270. 274. [4] Lives of Philoſophers, 8°. *Lond.* 1702. 481. [5] *Bayle* Art. *Epicure*. [6] *Eraſm.* Coll. cui nomen, *Epicurus* 731, 739. Note 1. [7] *Tuſc.* Diſp. L. 3. xx. [8] *Stanley*, Lives Phil. 514. a. [9] Bibliothec. Claſſ. 1041. & alibi. [10] Tit. *Bruni*.— Mr. *Bayle* Art. *Aretine*.

Aretinus, in his Introduction to Moral Philoſophy, have concurr'd in this, that it is Virtue alone which procures and effects Happineſs, wherefore *Ariſtotle*, (Lib. 7. *Polit.*) defining Happineſs, ſays, "That it is the Perfect Exerciſe of all the Virtues." This being granted, I deſire you to conſider what will follow from theſe Premiſſes. (g) Human Laws are no other than Rules whereby the perfect Notion of Juſtice can be determined: But that Juſtice, which thoſe Laws diſcover, is not of the Commutative, or Diſtributive Kind, or any one particular diſtinct Virtue, but it is Virtue Abſolute and Perfect, and diſtinguiſhed by the Name of Legal Juſtice, which the ſame *L. Aretinus* affirms to be therefore Perfect, becauſe it utterly rejects and diſcountenances whatever is Vicious, and teaches an Univerſal Virtue, for which it is deſervedly called, *Simply*, by the Name of Virtue in the General; concerning which thus *Homer* and *Ariſtotle*, It is the moſt Excellent of all the Virtues, and that (h) nor Morning nor Evening Star is ſo bright or lovely as This. This Juſtice is the Subject of the Royal Care, (i) without which a King cannot act in his Judicial Capacity as He ought to do, and without which He cannot juſtly engage in any War: But this being once attained and ſtrictly adhered to, the whole Regal Office will, in all reſpects, be adequately and completely diſcharged; ſo that (to Sum up what We have ſaid) Happineſs conſiſts in the perfect Exerciſe of all the Virtues; and ſince that Juſtice which is taught and acquired by the Law, is Univerſal Virtue, it follows, that He who has attained this Juſtice, is made Happy by the Laws, conſequently has attained the *Summum Bonum*, or Beatitude,

Aretine, becauſe He was of *Arezzo*, lived in the XVth Century. He was one of the moſt able Men of his Time, and his worth procur'd him conſiderable Employments; He was a Philoſopher, Hiſtorian and Orator. He dy'd A. D. 1443. at Florence, being 74 Years of Age. *Verſio Latina* Ariſtotelis *Ethicorum ad* Nichomacum Leonhardi Aretini, *cujus* Iſagoge *in hos Libros legitur*. *Fabric.* Bibl. *Gr.* T. 2. p. 153. Du *Freſne*'s Index.

(g) Laws may be ſaid to be perfect, When they give Rules for Juſtice and are as little defective, as Integrity of Method and Prudence, Equity and Exactneſs, compoſed by Man, can arrive at; which [11] *Budæus* well expreſſes, "Quod in Legibus, S.— Conſultis, rebus judicatis, Juris-peritorum Authoritate, Edictis Magiſtratuum, More, Æquitate conſtitit." The Laws are called Rules, as Rules do not incline to Things, but they muſt conform to Rules. W.

(h) [12] Αὕτη μὲν ἓν δικαιοσύνη ——— "Hæc quidem Juſtitia Virtus ſanè perfecta eſt, non ſimpliciter tamen, ſed alterius collatione: Et propterea ſæpe-numero Juſtitia Virtutum præſtantiſſima eſſe videtur, & neque *Heſperus* neq; *Lucifer* adeo admirabilis.

Juſtitia in ſeſe Virtutes continet omnes.

"Perfecta maxime eſt Virtus quia perfectæ Virtutis eſt uſus.] *Ariſtoteles* ideo comparat *Heſpero* & "*Lucifero*, quæ Stella eſt omnium lucidiſſima, mane antecedens ortum Solis, & veſperi ſubſequens "Solis Occaſum. (*Magirus*, ubi ſupra, 436.) Juſtus potiſſimum exercet Virtutem ſuam ad commodum aliorum, *quod debet facere imprimis Ille, Qui Magiſtratum gerit, ut aliorum commoda procuret.* (*Riccobon*, p. 603.) The Place here intended by our Author is in the 22d Iliad.

Ἔσπερος ὃς κάλλιστος ἐν οὐρανῷ ἵσταται ἀστήρ. Il. X. 318.

The Brighteſt Star that ſhineth in the Sky. (*Hobbes*, p. 337.)
As radiant Heſper ſhines with keener Light,
Far-beaming o'er the Silver Hoſt of Night,
When all the Starry Train emblaze the Sphere. Mr. *Pope* Il. XXII. ver. 399.

"Quæ Harmonia à Muſicis dicitur in cantu, ea eſt in Civitate Concordia, arctiſſimum atq; optimum "omni in republica vinculum incolumitatis: quæ ſine Juſtitiâ nullo pacto eſſe poteſt. *Cic.* Fragmenta. *Verburg.* To. 4. 1426. b.

(i) "Boni Principis eſt ſummum Honorem Legibus exhibere, nec quicquam ſine illis, niſi ultimâ neceſſitate, tanquam tempeſtate, cogente, agere; ne ſi aliter faciat, in anceps periculum ſe conjiciat, & loco Regis, Tyrannum ſe exhibeat." *Hopperus* de Inſtit. Principis.

---

[11] In Pandect. Priores, p. 19. *Baſil.* Ed. [12] *Ariſtot.* Eth Ed. *Magiri*, 8°. *Francofurti*, 1628. V. 1. p. 420.— *Riccobon*, 8°. *Hanoviæ*, 1610. p. 193.— *Andron. Rhodij* Eth. Nicom. Paraphr. D. *Heinſij*, 8°. L. B. 1617. p. 261.

titude, ſince that and Happineſs in this fleeting Life mean the ſame Thing. Not that the Law it ſelf can do this excluſive of (k) Divine Grace: Nor will you be able to learn either what is Law or Virtue without it, not ſo much as in the Inclination to it. For, as (l) *Pariſienſis* ſays, "The Internal Appetitive Virtue of Man is ſo "vitiated by Original Sin, that Vicious Practices reliſh pleaſantly, "and the Works of Virtue ſeem harſh and difficult." Wherefore, that ſome give themſelves up to admire and follow Virtue, is owing to the Grace of GOD, and not their own Natural Strength or Uprightneſs of Diſpoſition. May I not now ask the Queſtion, whether the Laws, which thro' the Divine Concurrence work ſuch good Effects, as I have laid before you, are not to be ſtudied with the (m) utmoſt Application? Since He, who hath a juſt Notion of them, is in the Way to arrive at that Felicity, which, according to the *Philoſophers*, is the End and Completion of all Human Deſires, and the *Chief Good* of this Life. Tho' what I have hitherto offered is of General Conſideration only, and therefore may not ſeem to concern you, as you are Heir apparent to a Crown; Yet, the Words of the Prophet lay an Obligation on you, even in that Capacity, to apply your ſelf to the Study of the Law, when He ſays, "Be in-"ſtructed, Ye Judges of the Earth." (*Pſ.* II. 10.) The Prophet do's not here perſwade to the Learning of any Mechanical Art or Trade, nor yet of any Science in Theory, how proper or beneficial ſoever to Mankind; For He do's not ſay in General, Be inſtructed, Ye Inhabitants of the Earth, but addreſſes himſelf in a particular Manner to the Kings, or Rulers of this World; and exhorts them to the Study of the Law, according to which they ought to adminiſter Juſtice and Judgment to their People: "Be inſtructed, Ye "Judges of the Earth," —— it follows, "Leſt at any Time the "LORD be angry, and ye periſh from the right Way." Neither, Great Sir! do the Scriptures only oblige you to be inſtructed in the Laws, by which Juſtice is to be learnt and attained, but in another Place gives it you in Charge to love Juſtice her ſelf, ſaying, "Love "Righteouſneſs, Ye that be Judges of the Earth." [*Wiſd. Solomon* I. 1.

(k) To this Purpoſe St. *Paul* expreſſes himſelf very ſhort and pathetically, "By the Grace of "GOD I am what I am." It is not Fleſh and Blood that reveals it, but by the Free Bounty of GOD I am what it hath pleaſed him to make me.

(l) *Pariſ.*] He was one of the old Schoolmen, A. Dom. 1240. Gulielmus Pariſienſis, Epiſcopus Ejus Loci, varia ſcripſit. ob. 30. Mart. an. 1249. Ejus Opp. Venetiis edita v. Bibl. Patr. p. 329. his Works are frequently quoted by the Commentators. Alſtedius. Du Freſne's Index. [*Pariſ.* in libro ſuo de *Cur Deus Homo.*

(m) Conari manibus, pedibus. Ter. Andr. IV. I, 53.

CHAP. V.

Ignorance of the Law, the Conſequence.

BUT, Sir! How will you love Righteouſneſs, or Juſtice, unleſs you firſt acquire a competent Knowledge of the (a) Laws, by

(a) *Hopperus*, a very Learned Counſellor to the King of *Spain*, calls the Law, "Summam Di-"vinæ mentis Rationem, & Vocem cum Bonitate & Potentia conjunctam, quæ poſita in Repub. "jubet ea, quæ facienda ſunt, & prohibet contraria. L. 1. de vera juriſprud. Tit. 20.

which *Juſtice* is to be learnt and known: For, as the (b) *Philoſopher* ſays, "Nothing is admired or loved unleſs it be known," which made the Orator (c) *Fabius* ſay, "That it wou'd be well "with the Arts and Sciences, if Artiſts only were to make a Judg- "ment of them." What is not known, is ſo far from being loved, that it is uſually deſpiſed, as ſaith a certain Poet,

The Ruſtic what he knows not always ſlights.

Nor is this the Way of the Clown only, but of Men of Learning and Skill in the Liberal Arts and Sciences. Suppoſe (for Inſtance) a Natural (d) *Philoſopher*, who had never ſtudied either the Mathematics, or Metaphyſics, ſhould be told by a *Metaphyſician* that his Science conſiders Things abſtracted from all Matter and Motion, both as to their Eſſence or Reality, and as to our Conception of them: The *Mathematician* aſſerts, that his Science conſiders Things in Reality conjoined to Matter and Motion, but ſeparated from them in Our Conception: It is certain that Our *Naturaliſt*, who was never acquainted with any Thing ſeparated from Matter and Motion, either in Reality or Conception, would not forbear laughing at both of them, and would be apt to deſpiſe their reſpective Sciences, tho' of a ſublimer Nature than his Own; and that for no other Reaſon, but becauſe He is perfectly unacquainted with them. So (my Prince) would you in like Manner be ſurpriſed at a Lawyer who ſhould aſſert, that One (e) Brother ſhall not ſucceed in the Father's Inheritance to another Brother, who is not born of the ſame Mother, but that the Inheritance ſhall rather deſcend to the Siſter of the whole Blood, or it ſhall come to the Lord of the Fee by Way of (f) *Eſcheat*; You would be ſurpriſed (I ſay) at this, as not knowing the Reaſon of the Law in this particular Caſe. Whereas the ſeeming Difficulty of this Caſe gives

(b) *Ariſtotle* was called the Philoſopher for his Eminency in Knowledge. *Nihil Amatum.*] This Poſition *in Terminis* I can't find, but the Senſe, and very near the Words are in his *Analytic.* prior. L. 1. in initio. W. v. *Fabric.* Bibl. Gr. III. 6. de his Libris, *Ariſtotelem* laudans, *Jacobus du Portus.*

Quando ergo in Logica primas tulit atq; ſecundas
Rite priora Ille & Poſteriora dedit. Poem. p. 223.

(c) *M. Fabius Quintilian*, Author of the Inſtitutions of Oratory. W.

(d) The Natural Philoſopher ſearches into the Nature of Compound Things; their Revolutions, Elements, Generation, Corruption: Of Meteors, Minerals, Tendency of Beaſts; Vegetables, and all their Species. The Metaphyſician underſtands Subſtance, Accidents, all Senſible Beings, yet ſeparate from Matter and Form as ſuch, they are mere Creatures of the Brain, which have no Exiſtence *in rerum Naturâ*, but only in our Imaginations or Conceptions.— Metaphyſicks is a very Thin and Subtle Kind of Science, which has for its Subject, *Ens* quatenus *Ens*, or *Ens* quatenus *immateriale* — It teaches

To know *what's what*, and that's as high
As *Metaphyſic* Wit can fly. *Hudibras*, Canto I.

The ſeeming Demonſtration of theſe, and ſuch like Difficulties, ariſes from the applying of the Maxims taken from Phyſical and Material Things, to Mathematical Ideas, which are in the Mind only, and have no Exiſtence in the Nature of Things.

(e) The Brother of the Half-blood ſhall not inherit, becauſe, He being not of the Complete Blood is not a Complete Heir. *Propinquior excludit propinquum, Propinquus remotum, Remotus remotiorem.* 1 *Inſt.* 10. b. 14 & ſeqq. *Hale* 238.

(f) *Eſchaeta.*] In the Civil Law, I ſuppoſe, it is called *Caduca.* W. *Eſchete* cometh of the French, *Eſcheoir, cadere, excidere.* What We call *Eſcheats* are, in the Kingdom of *Naples*, called *Excadentia*, or *Bona Excadentialia.* In the ſame Signification that We ſay, The Fee is *eſcheated*,

no Perplexity at all to ſuch as are Skilled in the Common Law of *England:* Which confirms the Vulgar Saying, "The Arts and "Sciences have no Enemy but the Unlearned."

But far be it, My Prince, that you ſhould prove averſe, or an Enemy to the Laws of that Country to which you will in Time inherit by Right of Succeſſion, when the above cited Text of Scripture inſtructs you to love Righteouſneſs. Wherefore, moſt (g) Noble Prince, permit me (h) again and again to importune and beſeech you to (i) inform your ſelf thoroughly in the Laws of your Father's Kingdom, not only that you may avoid the Inconveniencies I have mentioned, but becauſe the Mind of Man, which has a natural Propenſity to what is good, and can deſire nothing but as it has the Appearance of Good, as ſoon as by Inſtruction it comes to a perfect Knowledge of that Good, It rejoices, takes pleaſure therein, and as it improves by Reflexions, the Pleaſure grows more and more; from whence you may infer, that when you come to be inſtructed in thoſe Laws, to which you are at preſent a Stranger, you will moſt certainly affect and love them, becauſe they are excellent in their Nature and Reaſon; and the more you know of them, the more will you be entertained and pleaſed. For what is once loved do's by uſe transform the Perſon into its very Nature, according to the (k) *Philoſopher*, "Uſe becomes a ſecond Nature." (l) So the Cion of a Pear-Tree grafted on an Apple-Stock, after it has taken, draws the Apple ſo much into its Nature, that both become a Pear-Tree, and are called ſo from the Fruit which they produce. So, Virtue put in Practice grows into a Habit, and imparts its very Name to thoſe who practice it: As We ſay of one Who is indued with *Modeſty*, *Continence* or *Wiſdom*, that He is *Modeſt*, *Continent*, *Wiſe*. So you (my Prince) when you ſhall have practiſed Juſtice

1 with

eſcheated, the Feudiſts ſay, *Feudum aperitur*. [Cowell Interp.] *Eſcheat* is a Caſual Profit, which happens to the Lord by Chance, unlooked for and for want of Heirs [1]. *Excadentia*, in [2] Conſuetud. Siculis. [3] *Terræ Excadentiales*— v. *Fleta*, L. 6. c. 1. § 18.— *Somner. Madox'* Pref. Epiſt. Hiſt. Exchequer.— ib. Chap. X. II. *Omnia quæ poterunt extraire*— Form. Anglicum. N° CCXXVIII. *Ger. Tilb.* de Scaccario X—& ib. p. 45. (m. m.) *Spelm.* Relig. p. 37.

(g) *Inclytus*,] An Epithet frequent with Virgil. Æn. II. 82.—VI. 479. 562. 781.— XII. 179.

(h) So [4] *Virgil*— Repetens iterumq; iterumq; monebo. Per omnes tibi adjuro Deos. [5] *Ter. Ad* Auctiva particula eſt, ut *Admirabiliter*, valde mirabiliter. *Donatus.*

(i) Honeſtum illud *Solonis*, quod ait in Verſiculo quodam, "Seneſcere ſe multa indiès addiſcentem; qua Voluptate animi, nulla certè poteſt eſſe major. [6] *Cic.* περσμανθάνω, addiſco, inſuper diſco. *Scapula.*

(k) *Philoſophus*,] Ariſtot. L. 7. c. 10. ſub finem. τὸ Ἔθος— "Conſuetudinem mutare difficile eſt, quia naturæ ſimilis eſt." He quotes [7] *Evenus'* Verſes.

Φημὶ πολυχρόνιον ———— ————
Conſuetudo quidem rerum tractatio longa eſt,
Quam procedentem Naturam dicimus eſſe.
Ariſtot. Eth. Edit. Magir. 698.— *Riccobon* 702.

(l) Et ſæpe alterius —— *Virg.* G. II, 32.

'Tis uſual now, an inmate Graff to ſee
With Inſolence invade a foreign Tree:
Thus Pears and Quinces from the Crab-Tree come,
And thus the ruddy Cornel bears the Plum. Mr. *Dryden.*

[1] 1 *Inſt.* 92. b. [2] L. 1. Tit. 77. [3] *Du Freſne* ad. V. [4] Æn. III. 436. [5] Andr. IV. 2, 11. [6] De Senectute, XIV. [7] V. *Suidas* Tit. Ἔυηνος— *Kuſter's* Edit. *Stephani* Dict. Poet. *Harpocration* de *Evenis* plurima v. ap. Joſ. *Scaliger.* in Chron. *Euſeb.* J. *Rigaltium* ad *Artemidorum*, p. 6. Minor Poets, *Winterton*, p. 468. "Fuit Præceptor *Philiſti* Hiſtorici, Qui floruit Olymp. 93. An. 3. Ejus duo Epigrammata ſuperſunt. *Hoffman.* Lex. Univerſale. Fabric. Bibl. Gr. To. 1. p. 449.

with Delight and Pleaſure, and have, as it were, tranſcribed the Law, which is the Rule of Juſtice, into your very Habit and Diſpoſition, will deſervedly obtain the Character of a Juſt Prince. And, as ſuch, be ſaluted with thoſe agreeable Words of the *Pſalmiſt*, "Thou loveſt Righteouſneſs, and hateſt Wickedneſs, therefore "GOD, thy GOD ſhall anoint thee with the Oil of Gladneſs "above thy Fellows. [Pſ. XLV. 7.]

CHAP. VI.

A Repetition of his Exhortation.

AND now, Moſt Gracious Prince, are not theſe Arguments, which I have offered, abundantly ſufficient to induce you to the Study of the Law? Since thereby You will acquire a (a) Habit of Juſtice, be Honoured with the Name and Character of a juſt Prince; not to ſay, that you will thereby alſo avoid the Imputation and Diſgrace which attends (b) Ignorance; and moreover you will thereby attain to (*that*, which all Men covet after) *Happineſs*, as far as it is attainable in this Life; and thro' that Fear of GOD which is the trueſt Wiſdom, and that Charity or Love of GOD which, in the Peace and Satisfaction of it, paſſes all Underſtanding, being, as it were, united to the Beſt and Greateſt Being, the Fountain of all Happineſs and Perfection, you will become (to uſe the Apoſtle's Expreſſion) one Spirit with him.

But, becauſe theſe Things (as I ſaid) cannot be wrought in you merely by the Law, without the ſpecial Aſſiſtance of Divine Grace, It is neceſſary that you implore for that above all Things; as alſo that you ſearch diligently into the Knowledge of the Divine Law, as contained in the Holy Scriptures. For *Holy Writ* ſaith, "Vain "are all Men by Nature who are ignorant of GOD. (*Wiſd. Solomon* XIII. 1.) I adviſe You therefore, My Prince, that whilſt you are Young, and your Soul is, as it were, a Virgin-Table, a Blank Space, You write it full with ſuch Things as I have above hinted at, leaſt (c) afterwards it be more pleaſantly, tho' deluſively filled with Characters of little or no Importance, according to the Saying of a certain Author.

(d) *The*

(a) This is in plain Alluſion to the Scriptures, *Sacerdotes tui induent Juſtitiam—Sacerdotes ejus induam Salute.* [Pſ. CXXXII. 9. 16.] *Juſtitia indutus ſum,* [Job XXIX. 14.] *Induit me veſtimento Salutis.* Iſ. LXI. 10.

(b) A Prince approves himſelf Soft and Deſpicable who knows little or nothing of the Laws, according to which He is ſworn to Govern. W. Ignorant Princes bring Great Contempt and Miſery upon a Nation, but no Princes are more Grievous to their Subjects, than ſuch as are Needy and yet have no Goodneſs. Of this We have Inſtances in our own Hiſtory to the ſame Purpoſe. *Comines*[1]. "All Iſrael heard of the Judgment which the King had judged, and they feared the "King: For they ſaw that the Wiſdom of GOD was in him, to do Judgment. 1 Kings III. 28." The Good or Bad Qualities of a Prince have a great Influence over their Subjects, as is evident from the Hiſtories of all Nations. V. Buchanan de jure regni, p. 231.

(c) Neglectis urenda filix innaſcitur agris. [2] *Hor.*] "Sic Vitia in Animo Philoſophiæ Documentis non imbuto creſcunt & pullulant. *Deſprez* ad loc.

[1] 13. II. Chap. VI. p. 156. [2] Sat. I. 3. 37.——

(d) *The Veſſel its firſt Tincture long retains.*

What Mechanic is there ſo unattentive to the Advantage of his Child, as not to inſtruct him in his Trade while He is Young, whereby He may afterwards gain a comfortable Subſiſtence. So the Carpenter teaches his Son to handle the Ax; the Smith brings up his at the Anvil; a Perſon deſigned for the Sacred Office of the Miniſtry is bred, in a Liberal Way, at School: So it becomes a King to have his Son (who is to ſucceed him) inſtructed in the Laws of his Country, whilſt He is Yet Young. Which (e) Rule, if *Kings* would but obſerve, the World would be govern'd with a greater Equality of Juſtice, than now it is. And, if you pleaſe to follow the Advice I give, You will ſhow an Example of no ſmall Conſequence to other Princes, Perſons of the ſame High Rank and Diſtinction with Your Self.

(d) Quo ſemel eſt imbuta recens ſervabit odorem
Teſta diu—— [3] *Hor.*] "Præclara Sententia quam hinc muttuatus eſt S. Hieronymus ſcribens ad Lætam. (*Deſprez* ad loc.) Quæ primis annis imbibimus: ea nos per omnem ætatem conſequi ſolent.—— Etiam atq; etiam hortor, & ad Studium Sapientiæ Virtutiſq; tanquam ad aliquod certamen, omnes & ſingulos provoco." *Friſchlini* Par. ad eund.

(e) *Seintgerman* ſeems to have this Paſſage in his View, where he ſays, "If the Noblemen of this Realm would ſee their Children brought up in ſuch Manner, that they ſhou'd have Learning and Knowledge, eſpecially of the Grounds and Principles of the Law of the Realm (ſuch Knowledge as Maſter *Fonteſcue* in his Book De Laudibus, &c. adverties the Prince to have,) It wou'd be a great Help to the Adminiſtration of Juſtice, Great Security for Himſelf, and a Matter of Great Gladneſs to all People." Dr. & Stud. c. 46. ſub finem.

[3] Ep. I. 2. 69.

CHAP. VII.

The Prince yields, and propoſes ſome Doubts.

THE Chancellor having ended, the Prince begun as follows: You have overcome me, Good Chancellor, with Your agreeable Diſcourſe; and have kindled within my Breaſt a more than ordinary Thirſt after the Knowledge of the Law. There are two Things nevertheleſs, which make me fluctuate, ſo that, like a Ship in a Storm, I know not which Way to direct my Courſe. One is, when I recollect how many Years Students of the Law are taken up, before they arrive at any Competent Knowledge of it: Which diſcourages me, leſt I employ all my Younger Years in like manner: Another Thing is, whether to apply my ſelf to the Study of the Laws of *England*, or of the *Civil Laws*, which are ſo famous throughout the Univerſe: For a Kingdom ought to be govern'd by the Beſt of Laws, according to *the Philoſopher*, Nature always covets what is beſt. Wherefore I would willingly attend what you adviſe in this Matter. To whom the *Chancellor*, Sir! there is no ſuch Myſtery in theſe Things, as to require Abundance of Deliberation; and therefore I ſhall give you my Thoughts upon the Matter without keeping you in Suſpence.

CHAP. VIII.

What Knowledge of the Law is neceſſary for a Prince.

THE *Philoſopher*, in the firſt of his (a) Phyſics, ſays, " 'Tis " ſuppos'd that We then know every Thing, when We appre- " hend the Cauſes and Principles thereof as high up as the firſt E- " lements:" Upon which the (b) *Commentator* obſerves, that by Principles *Ariſtotle* meant the Efficient Cauſes, that by Cauſes, the final Cauſes are intended, and by (c) Elements the Matter and Form: Now in the Laws there are not (properly ſpeaking) Matter and Form, *theſe* being what go to the Compoſition of Natural Things; but ſomething analogous to it however, *viz.* certain Elements, out of which they ariſe, as (d) *Cuſtoms*, *Statutes*, or *Acts of Parliament* and the *Law of Nature:* Whereof the Laws of Particular Kingdoms conſiſt, as Natural Things do of Matter and Form; what We read or write conſiſts of (e) Letters which are called the Elements of Reading or Writing. As for the *Principia*, which the Commentator calls the Efficient Cauſes, theſe are no other than certain *Univerſalia*, which the Learned in the Law, as well as *Mathematicians*, call (f) *Maxims*; in *Rhetoric* they are

(a) This Sentence, as quoted, is in Senſe in other Places of *Ariſtotle*, as [1] Εἰδέναι δὲ ἕκαστον τότε οἰόμεθα ——— We cannot be ſaid to know any Thing, till We apprehend the Cauſe of it, for which and by which it is ſuch. So *Analytic.* poſter. L. 2. c. 11. W.

(b) Probably *Averroes*, the Arabian Phyſician, Sir-named the *Commentator*, by Way of Excellence: He lived at *Cordoua* in *Spain* about the Year 1140. He wrote Commentaries upon almoſt all Ariſtotle's Philoſophy. *Collier* Dict. & Supplement. *Bayle* Art. *Averroes*. *Fabric.* Bibl. Gr. T. 2. p. 112. atque ib. alibi Tit. *Ariſtoteles*.

(c) *Elements* are the *ſine qua nons* to all Compoſition and the Underſtanding of all Things, which, without them, would be imperceptible by us. W.

(d) V. poſt. cap. XV. Note b.

(e) *Priſcian* Terms a Letter the Figure of an Element, and an Element properly the Force and Power of the Letter— Principles muſt follow Elements, as Words ſucceed Letters. W.

(f) A *Maxim* is a ſure Foundation or Ground of Art, a Concluſion of Reaſon which is and always has been immutably true, ſo called, " Quia Maxima eſt ejus Dignitas & certiſſima Authoritas, " atq; quod maximè omnibus probetur." So ſure and uncontroulable, that they ought not to be queſtioned: It is all one with a Rule, a Common Ground, *Poſtulatum* or *Axiom*, which is the Mathematical Term. It needeth not to aſſign any Reaſons, why, at firſt, Maxims were received as ſuch, it ſufficeth that they be not againſt the Law of Reaſon, nor the Law of GOD, and that they have been always taken for a Law [1*]. The Definition of a *Maxim* is, " A Propoſition or Principle in " any Art or Science generally received, grounded upon Reaſon, and not to be denied." A *Paradox*, in common Conſtruction, is a Strange Sentiment contrary to the received Opinion, that it has a Signification equivalent with Maxim, Axiom or Rule, I cannot be poſitive. [2] *Tully* indeed has it. " Animadverti *Catonem* locos graves ex Philoſophia tractare, abhorrentes ab uſu forenſi & " publico: Sed dicendo conſequi tamen, ut illa etiam populo probabilia viderentur: quod eo majus " eſt illi, quam aut tibi, aut nobis, quia nos ea Philoſophia plus utimur, quæ peperit dicendi co- " piam, & in qua dicuntur ea, quæ non multum diſcrepant ab opinione populari. *Cato* autem per- " fectus, mea Sententia, *Stoicus*, & ea ſentit, *quæ* non ſane probantur in vulgus: & in ea eſt hæreſi, " quæ nullum ſequitur florem Orationis, neque dilatat argumentum: minutis interrogatiunculis, " quaſi punctis, quod propoſuit, efficit. Sed nihil eſt tam incredibile, quod non dicendo fiat pro- " babile. Nihil tam horridum, tam incultum, quod non ſplendeſcat oratione, & tanquam exco- " latur. . . . . Ego illa ipſa, quæ vix in *Gymnaſiis* & in otio *Stoici* probant, ludens conjeci in " communes locos: quæ quia ſunt admirabilia contraque opinionem omnium, ab ipſis etiam " παράδοξα appellantur . . . . Scripſi libentius, quod mihi iſta παράδοξα quæ appellant, maxi- " me videntur eſſe *Socratica*, longeque *veriſſima*." A Rule is a Law or Principle to go by. V. *Fort.* Pref. IX. X. *Quintil.* I. 276.

---

[1] L. 2. Phyſ. Tr. 30. c. 3. p. 330. [1*] Dr. & Student, c. 8. [2] *Par.* ad M. Brutum— Ed. V. To. 4. 1381.

called *Paradoxes*, the Civilians call them *Rules of Law.* They are not diſcoverable by Streſs of Arguments or Logical Demonſtrations, but as is ſaid (g) (ſecundo *Poſteriorum*) by Induction, by the Aſſiſtance of the Senſes and the Memory: Wherefore, in the firſt of his Phyſics, *Ariſtotle* has it, that " Principles are not made up " of other Things, nor one of another. But other Things proceed " from them;" wherefore, according to the ſame Author, the firſt of his *Topics*, It is, that " Every Principle carries its own Evi- " dence with it, ſo that there is no diſputing with thoſe who deny " firſt Principles:" Becauſe, as the ſame *Philoſopher* writes in the firſt of his Ethics, " Principles do not admit of Proof by Reaſon " and Argument." Whoſoever therefore deſires to get a competent Underſtanding in any Faculty or Science, muſt by all means be well inſtructed in the Principles thereof. For, by reaſoning from theſe Principles, which are univerſally acknowledged and unconteſted, We arrive, at length, to the final Cauſes of Things. So that, whoſoever is ignorant of theſe three, the Principles, Cauſes and Elements of any Science, muſt needs be totally ignorant of the Science it ſelf; on the other Hand, when theſe are known, the Science it ſelf is known too, at leaſt in General and in the Main; tho' not diſtinctly, and completely.

So We judge that We know the Law of GOD, in knowing what is Faith, Hope, Charity, the Sacraments and GOD's Commandments: Leaving other Myſteries in Divinity to thoſe who preſide in the Church. Wherefore, *Our Bleſſed Saviour* ſays to his Diſciples, " Unto you it is given to know the Myſteries of the " Kingdom of GOD, but to others in Parables, that ſeeing they " might not ſee, and hearing they might not underſtand." And *the Apoſtle* cautions " Not to think of one's Self more highly than " We ought to think." (*Rom.* XII. 5 & 16.) And, in another Place, " not to mind high Things, not to be wiſe in our own Conceits." So, my Prince, there will be no Occaſion for you to ſearch into the *Arcana* of our Laws with ſuch tedious Application and Study; It will be ſufficient, as you have made ſome Progreſs in Grammar, to uſe the ſame Method and Proportion in the Study of the Laws. As to Grammatical Learning, which conſiſts of (h) *Etymology*, *Orthography*, *Proſodia* and *Syntax*, as ſo many Springs or Fountains running together to complete it; You are not ſo perfect a Maſter, 'tis true, as to be acquainted with all the Particular Rules and Exceptions comprehended under each of theſe; But yet that General Knowledge of Grammar, which you have acquired, is ſufficient for your Purpoſe, from whence you may be juſtly ſtiled, *a Grammarian.* In like Manner you may be deemed a Lawyer in ſome competent Degree, when, as a Learner, You ſhall become acquainted with the Principles, Cauſes and Elements of the Law. It will not be convenient, by Severe Study, or at the Expence of the beſt of your Time, to pry into Nice Points of Law; ſuch like Matters may be (i) left to your Judges and Counſel, who in *England* are

(g) V. ante Chap. V. Note b.

(h) *Ethimologia*] " Veriloquium, quo Verborum explicatio probatur." In Grammar it is taken for the " Ratio cognoſcendi caſuum Diſcrimina:" It has Relation to all Parts of Speech. W.

(i) The Lord *Coke* in his Expoſition of Weſtminſter 1. c. 15. explains this Paſſage fully, *per maundement le Roy, per Præceptum Regis.* The King being a Body Politic cannot command, but by Matter

called (k) *Serjeants at Law*, and others well Skilled in it, whom in Common Speech We call (2) *Apprentices* of the Law: You will better pronounce Judgment in your Courts by others than in Perſon: It being not cuſtomary for the Kings of *England* to ſit in Court, or pronounce Judgment (3) themſelves; and yet they are called

Matter of Record, according to the Law. *Rex præcipit* and *Lex præcipit* are all one. When any Judicial Act is by an Act of Parliament referr'd to the King, it is underſtood to be done in ſome Court of Juſtice, according to the Law. The Opinion of [3] *Gaſcoigne*, Chief Juſtice, is in this Point remarkable, "That the King hath committed all his Power judicial to divers Courts." Upon the Stat. 1 R. II. 12 (2) **Unleſs it be by Writ or other Commandment of the King.** It was reſolved by all the Judges of England, that "the King cannot do it by any Commandment, "but by Writ, or by Order, or Rule of ſome of his Courts of Juſtice, according to Law." All Matter of Judicature and Proceedings in Law are diſtributed to the Courts of Juſtice, and the King doth Judge by his Juſtices. 2 *Inſt.* 186, 7. *Ruſhw.* I. 535 (3) 536.— II. 485. V. *Atkins* D. P. p. 37. Sadler 275. b.

(k) Serjeants at Law. V. poſt chap. L. Note a.

(2) *Apprenticios.*] From *apprendre*, i. e. *to learn*, comes *Apprentice de la ley*; which will denote as much as *diſcipulus*, applied by *Juſtinian* to ſomewhat a like Degree in his Law. For after he had reckoned his *Dupondij*, or *Juſtiniani novi*, that is, Students of two Years ſtanding, his *Papinianiſts*, Students of three Years, his *Lytae*, thoſe of four Years, and his *Prolytae*, for them of five, to whom the Reading of the whole Courſe of that Law, and an able Underſtanding was imputed; he then comprehending the *Prolytae*, and the reſt labouring to that Degree, adds, *Diſcipuli igitur, omnibus eis legitimis arcanis reſeratis, nihil habeant abſconditum*, but that they might afterwards be *juſtitiae ſatellites, & judiciorum optimi tam athletae, quam gubernatores omni loco aevoque fælices.* So he writes, (2) *digeſt. prooem.* The antienteſt Mention of an *Apprentice* in this Senſe which our publiſhed Books have, is in 1 *Ed.* III. *fol.* * 16. *pl.* 3. But in the Monuments of Parliament, of 20 *Ed.* I. extant in the Tower, this Teſtimony is of them: *De Atturnatis & Apprenticiis, D. Rex injunxit* Johanni *de* Mettingham *& Sociis ſuis, quod ipſi per eorum diſcretiones provideant & ordinent certum numerum de quolibet comitatu de melioribus & legalioribus & libentiùs addiſcentibus ſecundum quod intellexerint quod Curiæ ſuæ & populo de regno melius valere poterit & majus commodum fuerit & quod ipſi quos ad hoc elegerint Curiam ſequantur, & alii non. Et videtur Regi & ejus conſilio quod ſepties-viginti ſufficere poterint, &c. Apponant tamen præfati Juſtitiarii plures ſi viderint eſſe faciendum vel numerum anticipent, & de aliis remanentibus fiat ſecundum diſcretionem Juſtitiariorum.* Mention is of them alſo in *Fleta*, *lib.* 2. *cap.* 37. Part of that of 20 *Ed.* 1. is tranſcrib'd in the Epiſtle of the 9 Reports, where more is out of Antiquity touching theſe Apprentices. The Name was us'd for Practiſers, and *Apprenticii ad Barros* are Barriſters in the ridiculous Verſes of *Andrew Horn* before his *Mirrour aux Juſtices.* Theſe are they,

Hanc legum ſummam, ſi quis vult mira tueri,
Perlegat, & ſapiens ſi vult orator haberi;
Hoc Apprenticijs *ad* Barros *ebore munus,*
Gratum juridicis utile mittit opus
Horn *mihi cognomen*, Andreas *eſt mihi nomen.*

This *Horn* liv'd about *Ed.* 2. his certain Age I yet know not. The Verſes I tranſcrib'd out of an ancient Copy of him, extant in *Bennet* College Library in *Cambridge*, and written, as it ſeems by the Hand, about *Edw.* 3. or *Rich.* the Second's Time. *Seld.*

——— *Benchers*, ſuch as have been Readers, anciently called *Apprentices* of the Law. [4] *Apprentiſage* d'Advocas plaidans, pro tyrocinio juris conſultorum. Apud nos (inquit *Spelman*) utique dicuntur alij *Apprenticij* ad Legem, alij olim *Apprenticij* ad Barras. De his dictum [5] X. Scriptt. ubi juris regni *Apprenticij* nuncupantur. *Somner.* V. poſt. c. 50. N. l.

(3) *Proprio ore nullus Regum Angliæ*] Yet certainly the Kings themſelves often ſate in Court (in the King's Bench:) And in the Rolls of Charters under King *John*, and the Time near him, often occur Grants that ſuch or ſuch Engliſh ſhould not be impleaded or put to anſwer *niſi coram nobis vel capitali Juſtitia noſtra*, and to *Normans niſi coram nobis vel capitali Seneſcallo noſtro.* For Example, in *Rot. Chart.* 1. *Reg. Joh. Chart.* 171. *Memb.* 28. the King gives to one *Jacob*, a Jew of *London*, and a Prieſt of the Jews, *Presbyteratum omnium Judæorum totius Angliæ* for Life, and the Patent hath in it, *prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum niſi coram nobis aut coram capitali Juſtitia noſtra ſicut Charta Regis Richardi fratris mei teſtatur.* Here *coram capitali Juſtitia* is divided from *coram Rege*; the laſt ſignifying before the King's Perſon; although now Pleas held in the King's Bench before the Succeſſor of the *Capitalis Juſtitia*, are enter'd *coram Rege*, and ſome Rolls (as of 44 *Hen.* 3.) have *placita coram Domino Rege de Tempore* Hugonis Bigod *Juſtitiarii Angliæ*, and alſo in the ſame Bundle *Placita coram* Hugone *le* Bigod *Juſtitiario Angliæ.* And *Bracton*, *lib.* 3. *tract. de Actionibus cap.* 5. *ſi actiones criminales ſint, in Curia Domini Regis debent terminari, & hoc coram ipſo Rege ſi tangant perſonam ſuam*, and in 2 *Ed.* 4. the King ſate in Perſon †, certain Days together in his Court of King's Bench, to ſee Juſtice and Equity done. v. Spelm.

---

[3] *Spelm.* p. 342. (2) *C. tit. de veteri jure enucl. l.* 1. *Deo auctore* § 6. * 17. a.
[4] *Dugd.* 197. b. [5] 2636. linn. 4. 6. 21. † Selden.

called *The King's Judgments*, tho' pronounced and given by others: As *Jehoſaphat* aſſerted, that "They judged not for Man, "but for the Lord, who was with them in the Judgment." (2 *Chron.* XIX. 6.) Wherefore, moſt Gracious Prince, you will ſoon, with a moderate Application, be ſufficiently inſtructed in the Laws of England, if ſo be You give your Mind to it. *Seneca*, in an Epiſtle to *Lucillus*, ſays, "There is nothing but what great "(l) Pains and diligent Care will get the better of." I know very well the Quickneſs of your Apprehenſion and the Forwardneſs of Your Parts; and I dare ſay, that in thoſe Studies, tho' a Knowledge and Practice of twenty Years is but barely ſufficient to qualify for a Judge, you will acquire a Knowledge ſufficient for one of your High Quality, within the Compaſs of one Year; and in the mean while attend to, and inure your ſelf to martial Exerciſes, to which your natural Inclination prompts you on ſo much, and ſtill make it your Diverſion, as ſhall beſt pleaſe you, at your Leiſure.

v. Spelm. Rel. 219. Ed. I. when He ſat as a Judge on nice and doubtful Caſes, He ſtill gave Judgment without reſpect of Perſons, defending the Poor, and all ſuch as had ſuffered any Wrong or Injuſtice [6].

[7] Mr. *St. John*, in his Argument for Mr. *Hampden* concerning Ship-Money, ſays, "I conceive, that his Majeſty alone, without Aſſiſtance of the Judges of the Court, cannot give Judgment; I know that King *John*, H. 3. and other Kings have ſitten in the King's Bench, and in "the Exchequer; but, for ought appears, they were aſſiſted by their Judges. This I ground upon the Book Caſe of 2 R. 3. fo. 10, & 11. (*Mich.* pl. 22.) The Caſe of *Thomas* Earl of *Lancaſter* was very particular and Arbitrary "The King ſat in Perſon, and in defiance of the Conſtitution, his Majeſty, upon a bare Reading of the Articles againſt him, without arraigning him, "or hearing his Anſwer or Defence, or trying him by his Peers, condemned him to be executed. "This the two *Spencers* did, to the End the Judgment ſhould, or might be (as it was) called, *The King's Judgment*, intending, that no Man ſhould dare to call it by its true Name." V. *D. Suffolk's Caſe* in Parliament. Tyrrell I. Introd. LXXX. Rapin I. 293. Hickes d. e. 114, 5. *

(l) Epiſt. 50. Ed. Elz. p. 126.— *Lipſ.* Fo. *Venet.* 1615. p. 467. *Atk. Eccl. jur.* 68.

[6] *Tyrrell.* V. 3. 13. 9. p. 180. [7] *Ruſhw.* II. 485. v. *Ib.* I. 536. * V. *Capitolin.* in Ant. Phil. c. 10. p. 125. *Madox* H. Ex. p. 61, &c. 68.

CHAP. IX.

The Nature of a Government which is Political.

THE next Thing, my Prince, at which you ſeem to heſitate, ſhall, with the ſame Eaſe, be removed and anſwered, that is, whether you ought to apply your ſelf to the Study of the *Laws of England*, or to that of the *Civil Laws*, for that the Opinion is with them every where, in Preference to all other Human Laws: Let not this Difficulty, Sir! give you any concern. (a) A King of *England* cannot, at his Pleaſure, make any Alterations in the Laws of the Land, for the Nature of his Government is not only (b) *Regal*, but *Political*. Had it been merely *Regal*, He would have a Power to make what Innovations and Alterations He pleaſed, in the

(a) A King of *England* cannot, conſiſtent with his Oaths and Right, change the Laws at his Pleaſure, "Nihil poteſt Rex quam quod de jure poteſt." The Common and Statute Laws of *England* are, in the Maſs and Bulk of them, unalterable. 2 *Inſt.* 187. *Bracton.* W.

(b) *Solon* ſaid, that "That was the beſt Government, where the Subjects obeyed their Prince, "and the Prince the Laws. W. *Stobæus* Serm. 41, p. 248. v. *Forteſcue* of Monarchy 13.

Laws of the Kingdom, impoſe (c) *Tallages* and other Hardſhips upon the People, whether they would or no, without their Conſent, which Sort of Government the *Civil Laws* point out, when they declare (d) *Quod Principi placuit Legis habet vigorem:* But it is much otherwiſe with a King, whoſe Government is *Political*, becauſe He can neither make any Alteration, or Change in the Laws of the Realm without the Conſent of the Subject, nor burthen them, againſt their Wills, with (e) *ſtrange Impoſitions*, ſo that a People govern'd by ſuch Laws as are made by their own Conſent and Approbation enjoy their Properties ſecurely, and without the Hazard of being (f) deprived of them, either by the King or any other: The ſame Things may be effected under an *Abſolute Prince*,

X pro-

(c) *Tallagium*, or rather *Talliagium*, *Tallia*, *Taillage*, *Taille*, " Tributum vel Exactionis genus " populo inditum. *Hidage* vel *Taillage*, eſt *Tallagium* de *Hidis* Terrarum. *Danegeld*, eſt *Talla-* " *gium* datum *Danis*, &c. alibi quandoq; *Collata*, quandoq; *Taxa* dictum [1]". In the Law-Acceptation of the Word, It is a Share of a Man's Subſtance by Way of Tribute, Toll or Tax. It is a General Word and includes all Taxes and Impoſitions ſet upon any Man. " No *Tallage* or *Aid* " ſhall be taken or levied by us or Our Heirs in Our Realm, without the Good Will and Aſſent of " Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the Land [2]. " The King will make no *Aids*, &c." but by the Common Conſent of the Realm and for the Profit thereof. [3] *Auxilium.*] In the Ancient Record, entituled, *De modo tenendi Parliamentum*, temp. R. *Edwardi* filij *Etheldredi*. Debent *Auxilia* peti in pleno Parliamento [4]. " All *Tallages*, " Burthens or Charges put upon the Subject by the King, either to or for the King, or to or for " any Subject by the King's Letters Patents, or other Commandment or Order is prohibited by the " Statute, *de Tallagio non concedendo* [5]". *Hottoman* [6] deſcribes the Ancient Form and Conſtitution of the *Franco-Gallican* Government to be, " That the People, (as *Cæſar* tells us) had no leſs Au- " thority and Power over their Kings, than the Kings had over the People; 'tis probable, the " *Franks* did not derive this Conſtitution from the *Gauls*, but from their Countrymen, the *Germans*, " of whom *Tacitus* [7] ſays, their Kings have not an Arbitrary or unlimited Power. *Rapin*, V. 2. p. 9. n. — IX. 304. *Stillingf.* 45, 6. 64. The *Iriſh* called it *Cuttings*. Spelm. *Relig.* p. 60.

(d) *Quod Principi placuit*] V. poſt Chap. XXXIV. Note (22.)

(e) *Peregrinis*] i. e. not *more majorum*. V. 2 *Inſt.* 61. *Magna Charta*, Cap. XXX. *Temple* 227, 8. *Ruſhw.* V. 2. 503. V. poſt c. XIV. Note a.

(f) *Pillaged*, *pilled*, unjuſtly treated, abuſed. *Depilare*, decalvare, ad dedecus radere: Injuriæ Species. Among the [8] *Saxons*, " To ſhave off the Hair, and make a Man bald was the Puniſh- " ment of Theft. If a Woman was Incontinent, ſhe was ſhaven. *Eſt etiam Pœnæ Genus*, Hun- " garis *Familiare*, *quod occurrit in Decretis* S. Stephani R. *Hungar.* [9]. —S. Ladiſlai R. *Hungar.* v. *O Laum* [10] *Borrichium.* The Word (*depilor*) well expreſſes the Cruel Nature of Impoſitions, contrary to Law. Pulling off the *Hair* is reckoned opprobrious and inflicted by Way of Puniſhment; it was conſidered in this Manner among the *Lombards*. [*Alvarotus* [11]) " I gave my Cheeks to them " that plucked off the Hair: I hid not my Face from Shame [12]." The Comment is, " Oppro- " brious Uſage, many Affronts, by Way of Contempt and Reproach. *Hanun* King of *Ammon* " took *David*'s Servants and ſhaved the one Half of their Beards; when *David* was told How the " Men were ſerved, He ſent to meet them, (for the Men were greatly aſhamed) and the King " ſaid, tarry at *Jericho* till your Beards be grown, and then return [13]." This Uſage was ill-natured, and the higheſt Diſgrace that could be put upon them, for all People thought their *Hair* a Principal Ornament, and a Token that a Man is a *Freeman*. Among the *Indians* the King commanded the Greateſt Offenders to be ſhaven, as the Heavieſt Puniſhment He could inflict [14]. *Tacitus* ſays, that amongſt the *Germans*, Adultery is rarely committed, for which there is a preſent Puniſhment, and left to the Diſcretion of the Husband. " The Husband having cut off her *Hair*, " turns her out of his Houſe naked, before her Relations, and whips her thro' the whole Village." At this Day, it is the greateſt Indignity that can be offered to any Man in *Perſia*, to cauſe his Beard to be ſhaved off [15]. In the *Scripture Inſtance* above, the Affront was highly reſented by *David*, and the *Ammonites* were overcome. " Præſidibus onerandas Tributo Provincias ſuadentibus, reſcrip- " ſit, (*Tiberius ſc.*] *Boni Paſtoris eſſe Tondere Pecus, non deglubere.* Suetonius in *Tiber.* c. 32. *Hickes* d. e. p. 97. *Hottoman* F. G. p. 45, 6, & Chap. IX. *Camerarius* L. 2. c. XVI. Mulcts & *Expilations*. Cato's Letters II. 209.

---

[1] *Somner.* [2] 34 Ed. I. Stat. 4. *Keb.* 71. [3] 25 Ed. I. 6. *Keb.* 60. [4] 2 *Inſt.* 533. [5] 34 Ed. I. v. 2 *Inſt.* 534, &c. *Fort.* p. 2. *Madox* Excheq. 480. II. *Temple* 226. [6] *Franco-Gallia* p. 63. [7] Lib. de Mor. *German.* [8] In ſpeculo *Saxonico*, Seu jus Provinciale L. 3. Tit. 37. § 1. *Tyrrell* I. Introd. 77. *Wilkins*, p. 6. — p. 42. L. (31) v. *Du Freſne*'s Index, p. 176. & d. c. *Nicholſon.* præmiſſ. *Wilkins* III. y. [9] Lib. 2. c. 11. Lib. 3. c. 26. [10] De var. Ling. Lat. Ætat. p. 82. *Du Freſne.* [11] *Collier.* [12] *Iſ.* 50, 6. [13] 2 *Sam.* X. 4, 5. — 1 *Chron.* XIX. 4, 5. [14] N. *Damaſcen.* mentioned by *Stobæus* Tit. 42. [15] *Tavernier* in his *Indian* Travels, p. 121. *Patrick* Com. and upon 2 *Kings* II. 23. *Nehem.* XIII. 25.

provided He do not degenerate into the *Tyrant*. Of ſuch, a Prince, *Ariſtotle*, in the 3d of his *Politics*, ſays, (g) " It is better for a " City to be Governed by a Good Man, than by Good Laws." But becauſe it does not always happen, that the Perſon preſiding over a People, is ſo qualified; (h) St. *Thomas*, in the Book which he writ to the King of *Cyprus*, [De Regimine Principum,] wiſhes, that a Kingdom could be ſo inſtituted, as that the *King* might not be at Liberty to Tyranize over his People; which only comes to paſs in the preſent Caſe; That is, when the *Sovereign Power* is reſtrained by *Political* Laws. (i) Rejoice therefore, my Good Prince, that ſuch is the Law of that Kingdom to which You are to inherit, becauſe it will afford both to your ſelf and Subjects, the Greateſt Security and Satisfaction. With (k) ſuch a Law, ſaith the ſame St. *Thomas*, all Mankind would have been governed, if, in Paradiſe, they had not tranſgreſſed the Command of GOD. With the ſame was the whole Nation of the *Jews* governed, under the (l) *Theocracy*, when GOD was their King, who adopted them for his Peculiar People: 'Till, (m) at length, upon their own Requeſt, having obtained another Sort of King, they ſoon found Reaſon to repent them of their Fooliſh and raſh Choice, and were ſufficiently humbled under a *Deſpotic* Government: But, when they had Good Kings, as ſome there were, the People proſpered and lived at Eaſe; but when they were (n) otherwiſe; their Condition was both

1 wretched

(g) *Hottoman* [16] has it, " to obey a King is not Servitude.
Fallitur egregio, &c.— *Claudian.* de Laud. *Stiliconis.* L. 3. v. 113.

He knows no Bondage, whom a Good King ſways,
For Freedom never Shines with clearer Rays
Than when Brave Princes Reign.

(h) *St. Thomas Aquinas*, the Angelic Doctor, was a Fryar of the *Dominican* Order, born A. D. 1224. ſtudied at *Cologne* and *Paris*. His Works are in 18 Vols: [17] This Piece, *de regimine*, &c. was probably addreſt to *Hugh* II. or *Hugh* III. [18] and is to be found amongſt his Opuſcula: Which he, or, as ſome think, *Ægidius Romanus* wrote to the then King of *Cyprus*, to manifeſt his Love to him with Reſpect to his Conduct as a King. The Senſe of this * Paſſage is in L. 2. c. 8. 9. *St. Thomas de Aquino*, Doctor Angelicus, Ord. Præd. ob. 7. Mart. An. 1274. *Du Freſne*'s Index, p. 165. *Ægidius Romanus*, Præceptor to the Children of *Lewis* IX. writ a Treatiſe, de Regimine Principum. *Mem. Literature* V. 1. p. 14. *Fort.* p. 3. *Du Freſne*'s Ind. 94.

(i) To have ſuch a Law as *England* has, which eſtabliſhes Prerogative and Liberty in a Conſiſtency each with other, which aſſerts the King and his Subjects *Free*; which bounds the Crown not to ſwallow up Property, nor Property to oppoſe itſelf to the Crown; this is the Matter of Joy: Where all Parties concerned are agreed to promote the noble Ends of ſuch a Political Harmony. W.

(k) " Si referamus Dominium ad Statum integrum Humanæ Naturæ, qui Status Innocentiæ appel- " latur, in quo non fuiſſet *Regale* regimen, ſed Politicum [19]." The Uſe of this Quotation is to ſhew that *Regal* Power, ſuch as is the *Politie of England*, is the beſt Government to make both King and People ſecure in their mutual Aid and Affection each to other. W.

(l) This relates to the Times from *Moſes* to the End of their Government by *Judges*, containing the Space of about Four hundred Years, during which GOD uſed the immediate Miniſtration of Men to rule under him, with a Reſervation of the Monarchy to himſelf. A Diſpenſation of his Goodneſs to Iſrael, *The People of his Love and Delight, whom He bare on Eagle's Wings.* The Word (*Synagoga*) is here intended in the moſt extenſive Senſe, the whole Congregation of the *Jews*, from the *Gr.* Συνάγω, to gather together, and it is applicable to all Things whereof there may be a Collection. *Synagogue*, in the reſtrained Senſe, is commonly taken for the Houſe dedicated to the Worſhip of GOD, wherein it was lawful to pray, preach and diſpute, but not to Sacrifice [20]. It can in this Place ſignify no other than the whole Nation of the *Jews*.

(m) See the whole Hiſtory accurately deſcribed in the firſt Book of *Samuel.* Chap. VIII. XII. V. *Fort.* C. 1. *Aquinas*, p. 130. V. Hoſea XIII. 10. 11.

(n) *Diſcolus*,] Δύσκολος. Difficilis in ſumendo Cibo, qui eſt faſtidioſo ſtomacho.— *Item*, Moroſus, Difficilis, acerbus, cui omnia facta & dicta Stomachum movent. Δύσκολος ἡ φύσιν [21] — Servi eſtote Dominis

[16] F. G. p. 30. [17] *Collier.* [18] *Heylin*, p. 682. * V. *Opuſculum*, Cap. XXVI.
[19] *Aquinas*, L. 2. c. 9. p. 131. [20] *Godwin* Heb. Antiq. L. 2. c. 2. [21] *Scap.* Elz. 785.

wretched and without Redreſs. Of this You may ſee a particular Account in the Book of the Kings. This Subject being ſufficiently diſcuſt in a (o) ſmall Piece I formerly drew up on purpoſe for Your Uſe, *concerning the Law of Nature:* So I ſhall forbear at preſent to enlarge. [Sir *Robert Atkins* of the Diſpenſing Power, p. 19.]

Dominis non tantum bonis & Modeſtis, ſed etiam *diſcolis*. [1 Pet. II. 18.] So the old Latin Tranſlation. MS. Pergamen. penès me, and ſo quoted by *Aquinas*, p. 30.

(o) *Opuſculum* [Tractatus] de Naturâ Legis Naturæ— A Book compiled for the Uſe of Prince *Edward*, to ſet forth to him the Juſt Meaſure of Government according to the Law of Nature and Nations. "'Tis a very valuable and Noble Piece, of great Weight and Authority, and very much "in eſteem with its Author." It is mentioned by *Bale* and *Pits* under the Title, *De Vigore Legis Naturalis*, v. *Dugd.* 58. *Nicholſon* III, 167, W. 215, 423.

CHAP. X.

The Prince propoſes a Queſtion.

Prince. HOW comes it to paſs, my Chancellor, that one King may Govern his Subjects in ſuch an abſolute Manner, and a Power in the ſame Extent is unlawful for another King: Seeing Kings are equal in Dignity, I am ſurprized that they are not likewiſe equal in the Extent and Exerciſe of their Power.

CHAP. XI.

The Chancellor's Anſwer.

Chancellor. I Have, Sir! in the ſmall Piece referr'd to, ſufficiently made appear, That the King who Governs by Political Rules has no leſs Power than Him, who governs his Subjects at his mere Will and Pleaſure; yet, that the Authority which each has over their Subjects is vaſtly different, I never diſputed it. The Reaſon of which, I ſhall, the beſt I can, endeavour to explain.

CHAP. XII.

When and How Kingdoms ruled by Regal Government began.

FOrmerly, Men who excelled in Power, being Ambitious of Honour and Renown (a), ſubdued the Nations which were round about them by Force of Arms; they obliged them to a State of

(a) Kings in their firſt Original and Riſe of abſolute lawleſs Power are well deſcribed by *Daniel* [1], who, ſpeaking of *Nebuchadnezzar*, ſays, "All People, Nations and Languages Trembled and "Feared before him: Whom he would he ſlew, and whom he would he kept alive; and whom "he would he ſet up, and whom he would he put down." Kings are called in the Scripture [2], "*Giants in the Earth*,— Mighty Men, Men of Renown."— Men of vaſt Stature and Strength, which tempted them to oppreſs others by Violence, who carried all before them by main Force; Tyrants, who filled the Earth with Rapine and Murthers, and all Manner of Wickedneſs. *Patrick*'s Com.

[1] V. 19. [2] *Geneſis* VI. 4.

of Servitude, abſolutely to obey their Commands, which they eſtabliſhed into Laws, as the Rules of their Government. By Long Continuance and Suffering whereof, the People, tho' under ſuch Subjection, finding themſelves protected by their Governors from the Violence and Inſults of others; (b) ſubmitted quietly to them, thinking it better to be under the Protection of ſome Government, than to be continually expoſed to the Ravages of every one, who ſhould take it in their Heads to oppreſs them. From this Original and Reaſon ſome Kingdoms date their Commencement, and the Perſons inveſted with the Power, during ſuch their Government, *à Regendo* (from *Ruling*) aſſumed and uſurped to themſelves the Name of (c) *Rex* (*Ruler*, or *King*) and their Power obtained the Name of *Regal*. By theſe Methods it was, that (d) *Nimrod* firſt

1 acquired

(b) Tho' Conqueſt put the great Monarchs of the World in Poſſeſſion; yet conſent of the People aſcertained their Government Peaceful, and Hereditary to their Heirs and Succeſſors: The Conqueror was to protect them from Injuries, and they were obliged to be Loyal. W.

(c) *Rex*, à regendo,] In *France*, *Spain* and *Italy*, they have no one Word which ſignifies King, but what is derived from the *Latin*; a Language theſe Invaders were Strangers to, when they ſettled themſelves in their Conqueſts [3]. The Title of *King* was not in uſe among the *Saxons*. Hengiſt however took it upon him, as ſoon as he was put in Poſſeſſion of *Kent*. Indeed, 'twould have been a hard Matter for him to have found any other ſo proper to denote his Sovereignty over that Province. *Rapin*, V. 2. p. 140. *Fort.* p. 8. *Seld.* III. 943, 4. *Verſtegan* 167, 8. *Camd.* CLXXI.

* (d) " *Nimrod* was the Son of *Cuſh* the Son of *Cham*, the Curſed Son of *Noah:* He began to " be a Mighty One in the Earth, He was a mighty Hunter before the Lord: And the Beginning " of his Kingdom was *Babel*, and *Erech*, and *Accad*, and [4] *Calneh*, in the Land of *Shinar*.—" Beſides all the fore-mentioned, *Cuſh* alſo begot this Son; to diſtinguiſh him from the reſt, *Moſes* mentions him alone by himſelf, becauſe he was the moſt eminent amongſt his Brethren, tho' born the Laſt: A mighty Commander, as *Moſes* here deſcribes him. The Author of the *Chron. Alexandrin.* thinks he was the ſame with *Ninus:* But *Voſſius* rather takes him for him whom the Greek Writers call *Belus* [*Baal*] [5], that is, Lord, (a Name common to the Idols of the Eaſtern Countries) and that *Ninus* was his Son.— However it be, he was the firſt Great Warrior and Conqueror, the firſt that put down the Government of Elderſhip or Paternity, (according to *Sir Walter Raleigh*) and laid the Foundation of Sovereign Rule [*Patrick* ad Loc.] [6] This is the firſt Inſtance of the old Abſolute Regal Government of the *Aſſyrian* Monarchy in the Perſon of *Nimrod*. Robuſtus Venator] A mighty Hunter, of Great Activity and Valour. He exerciſed his Strength and Activity in Chaſing Beaſts, as a Preface to his Tyranny over Men. This Hunting of Beaſts they did not Uſe for Recreation, but to accuſtom their Natures to Cruelty; ſo did the Heroes of Antiquity, who meant to waſt and ſubdue Countries; they diſciplined themſelves to butcher Men, by doing the like firſt to Beaſts. " It was the Manner of antient *Perſia* to inure their Youth to Hardſhip and Fa- " tigue." Hunting and War were their only Exerciſes [7]. *Theſeus*, *Caſtor*, *Pollux*, *Ulyſſes*, *Diomedes*, *Æneas*, *Achilles*, were all trained up to hunting. " *Chirone* illos venandi Artem ſumma " cura edocente tanquam ad bellicam Diſciplinam non parum profuturam [8]. Heretofore the *Ro-* " *mans* were wont to learn Experience with their Pleaſure. They who Aſpired to become one " Day Generals, learnt here their Art, to out-run the ſwifteſt Beaſts, to overcome the Strongeſt, " and to take the Craftieſt [9]. *Romulus* and *Remus*, as ſoon as they grew to ſome Ripeneſs, could " not endure to lie like Sluggards in the Stables or Sheepcotes, but rove about the Woods a Hunt- " ing. And, by that Means gaining not only Strength of Body, but of Mind too, they encountred " not only Wild Beaſts, but ſet upon Robbers too, whom they met laden with Booty, and divided " the Spoil among their Brother Sheppards [10]." *Hoc* ſtudium Heroicum Regiumq; eſt, & ad Corporis animiq; bonam conſtitutionem confert. Eſtq; tàm placidæ fortitudinis, quàm Militaris audaciæ Specimen ad Virilitatem utile [11]. Hoc ſtudio *Mithridates* Inſidias vitavit, & corpus ad omnem patientiam duravit [12]. Venatura ſive Sylveſtrium Animalium, ſive aliorum, pro quibus ſe Principes & Reges *Gymnaſijs* exponunt, & Filios ſuos ſubmittunt, valet ad robur acquirendum & conſervandam Sanitatem, & cordis vigorandam virtutem, ſi temporatè utamur: Ut ſolent Reges *Franciæ* & *Angliæ*, & ut de *Germanis* in Geſtis *Francorum* ſcribit *Ammonius*. Equitatur, ad hoc idem movetur, qua Reges eſſe debent ornati ad decorem Regni, & ejuſdem contra defenſionem: Ad quod aptiores redduntur & expeditiores, ſi propria habent equorum Armenta, ut mos eſt Regibus *Orientis*. Aquinas 114, 5. *Collier*. Nimrod. *Fort.* p. 8. *Sir Walter Raleigh*, Book 1. c. X. § 1. p. 157, 8. *Seld.* To. III. 928. & alibi W.— *de Naturâ Legis Naturæ*, Cap. VII, VIII. v. *Mach.* Prince c. 14. *Shuckford*'s Con. I. 181. 190.

---

[3] *St. Amand* 28, 9. [4] *Gen.* X. 8—10. v. *Iſ.* X. 9. *Ezek.* XXVII. 23. *Amos* VI. 2.
[5] *Lowth.* on *Jer.* 50, 2. [6] *State Tracts* I. 245. * Shuckford 179. [7] *Xenoph. Cyropæd* B. 1. c. 6. *Tablature* of the Judgment of *Hercules*. Lord *Shaftsbury*'s Characteriſtics.
[8] *Bochart.* Geogr. Sacr. L. 4. c. 12. [9] *Plin.* Pan. c. 81.— Mr. *Smyth*'s Tranſl. p. 154.
[10] *Liv.* I. 4. [11] *Pollux.* præfat. Lib. 5. de Venatione. [12] *Juſtin.* Lib. 37. c. 2. n. 9.

acquired to himſelf a Kingdom, tho' he is not called a King in the Scripture, but, *a Mighty Hunter before the Lord.* For, as an Hunter behaves towards Beaſts, which are naturally Wild and Free; ſo did he oblige Mankind to be in Servitude and to obey him. By the ſame Methods *Belus* reduced the (e) *Aſſyrians*; ſo did (f) *Ninus* by the Greateſt Part of *Aſia:* Thus the (g) *Romans* arrived at Univerſal Empire: In like Manner Kingdoms began in other Parts of the World. Wherefore, when the Children of *Iſrael* deſired to have a King, as all the Nations round about them *then* had, the Thing diſpleaſed GOD, and he commanded *Samuel* to ſhew them the Manner of the King who ſhould Reign over them, and the Nature of his Government; that is, mere arbitrary Will and Pleaſure, as is ſet forth at large, and very Pathetically, in the firſt Book of *Samuel.* And thus, if I miſtake not, moſt excellent Prince, You have had a true Account how thoſe Kingdoms firſt began, where the Government is merely *Regal:* I ſhall now endeavour to trace the Original of thoſe Kingdoms, where the Form of Government is *Political*; that ſo, the firſt Riſe and Beginning of both being known, You may more eaſily diſcern the Reaſon of that wide Difference which occaſioned Your Queſtion.

Forteſcue of Monarchy, Chap. II.

(e) Hiſtorians and Geographers all agree, *Aſſyria* to be that very Place now called *Syria*, having on the *Eaſt*, *India*; on the Weſt, the River *Tygris*; on the South, *Media*; on the North, *Caucaſus:* To diſtinguiſh it the better, ſome divide it into *Syria*, *Aſſyria*, *Leucoſyria*, *Cæloſyria:* Others into *Syria* of *Paleſtine*, and *Syria* of *Antioch.* W.

(f) *Ninus* the Son of *Belus:* He was the Notable Monarch of *Aſia*; his Empire makes the firſt of the five Periods of Time: This Eſtabliſhment of *Ninus* was a Great One for Power and Territory, and a durable One; For the *Aſſyrians* commanded the upper Aſia for near DXX. Years. After *Ninus* had entred into a League with *Ariæus*, King of the *Arabs*, in ſeventeen Years Time he ſubdued all *Aſia*, which is as big as *Europe* and *Africa*, and contains in it *Myſia*, *Phrygia*, *Caria*, *Lyſia* and *Lycaonia*, the pleaſanteſt and richeſt Part of the World. W. *Diodor. Sic.* L. 2. *Trogus*, L. 1. V. *Collier* Tit. *Ninus.*

(g) Such was the Character of *Rome*, that to be a Citizen of it was accounted Noble: To be a Senator, was every Thing: Which *Adrian* the Emperor inſinuated in his Speech, when he made *Tatian*, his Captain of the Guards, and a Conſular Perſon, a *Senator*, "That he had nothing in his Power Equal to this laſt Honour [13]. *Italy* was the Original Soil of Liberty and Freemen.

[13] *Æl. Spartianus* in Vita Ed. *Sylburgij*, p. 123. *Var.* c. 8. *Eachard's Ro.* Hiſt. II. 290. v. poſt. c. 17. Note f. *Plato* Red. 45.

CHAP. XIII.

When and How Kingdoms ruled by Political Government began.

ST. *Auſtin*, in his Book, *de Civitate Dei*, has it, "That a (a) People is a Body of Men joined together in Society by a Conſent of Right, by an Union of Intereſts, and for promoting the Com-

(a) "Populus eſt cœtus multitudinis rationalis, rerum, quas diligit, concordi Communione Sociatus. *St. Auſtin* [1]", Almoſt the ſame in Terms with the Text. W. *Cœtus* is here underſtood in a Good Senſe, for a Company of Men met together and united, having ſome Capacity for Action. The *Code* makes it to import Ten in Company. Ib. *fere in deteriorem partem accipitur.* An unlawful Aſſembly [2]. "*Cœtus,*] Multitudinis magnæ nomen eſt coeuntis ex conſenſu quodam". [3] The Scriptures record it for an ill Time, *when there was no King in Iſrael, when every Man did that which was right in his own Eyes.* Judges VII. 6.—XXI. v. the laſt.

[1] *De Civ. Dei*, L. 19. c. 24. [2] *Somner.* [3] *Calvin.* Lex Jurid. ex *Briſſon.*

" Common Good;" not that a People ſo met together in Society can properly be called a Body, as long as they continue without a Head; for, as in the Body Natural, the Head being cut off, We no longer call it a Body, but a (b) *Trunk*; ſo, a Community, without a Head to govern it, cannot, in Propriety of Speech, be called a *Body Politic*. Wherefore, the *Philoſopher*, in the firſt of his *Politics*, ſays, " Whenſoever a Multitude is formed into one Body " or Society, one Part muſt Govern and the reſt be governed." Wherefore, it is abſolutely neceſſary, where a Company of Men combine and form themſelves into a *Body Politic*, that ſome one ſhould preſide as the Governing Principle, who goes uſually under the Name of *King*. In this Order, as out of an Embrio, is formed an Human Body, with one Head to govern and controll it; ſo, from a confuſed Multitude is formed a Regular Kingdom, which is a Sort of a Myſtical Body, with one Perſon, as the Head, to Guide and Govern. And, as in the Natural Body (according to the *Philoſopher*), the * (c) Heart is the firſt Thing which lives, having in it the Blood, which it tranſmits to all the other Members, thereby imparting Life, and Growth and Vigour; ſo, in the Body Politic, the firſt Thing, which lives and moves, is the Intention of the People, having in it the Blood, that is, the Prudential Care and Proviſion for the Public Good, which it tranſmits and communicates to the Head, as the Principal Part; and to all the reſt of the Members of the ſaid Body Politic, whereby it ſubſiſts and is invigorated. The Law, under which the People is incorporated, may be compared to the (d) Nerves or Sinews of the Body Natural; for, as by theſe the whole Frame is fitly joined together and compacted, ſo is the Law that Ligament (to go back to the trueſt Derivation of the Word, *Lex* à *Ligando*) by which the Body Politic, and all its ſeveral Members are bound together and united in one entire Body. And as the Bones, and all the other Members of the Body preſerve their Functions, and diſcharge their ſeveral Offices by the Nerves; ſo do the Members of the Community by the Law. And as the Head of the Body Natural cannot change its Nerves or Sinews, cannot deny to the ſeveral Parts their proper Energy, their due Proportion and Aliment of Blood; Neither can a (e) King, who is the Head of the Body Politic, change the Laws thereof, nor take from

I the

(b) *Truncum*, ſc. *corpus*. An Imperfect Body, *Truncus*, a Trunk or Body of a Tree, without the Boughs; a Body without a Head.— You may call a Carcaſe a dead Man, but ſimply You cannot call it a Man. *Boet.* L. IV. Proſ. II. p. 188.

* K. Ed. 6. Rem. p. 70.

(c) " Ea quæ ſunt, ad Naturam optimè ſe habent; in ſingulis enim operatur Natura, quod op- " timum eſt: Commune autem naturale regimen ab uno eſt; in Membrorum enim multitudine " unum eſt, quod omnia movet, ſc. Cor: Et in partibus Animæ una vis principaliter præſidet, ſc. " Ratio. Eſt Apibus unus Rex, in toto univerſo Unus Deus, Factor omnium & Rector. *Aquin.* 12.

(d) The Nerves are counted the Compago Corporis, which keep and bind all together: So, *Lex*, à *Ligando*. As Nerves are of the Strength of the Body Natural, ſo are Laws of the Body Politic. W. v. Sir *Robert Atkins* of the Diſpenſing Power, 6, 7, 24.

(e) *Rectoribus* Politicis agere non licet, niſi ſecundum formam Legum eis traditam, vel ex Arbitrio Populi, ultra quam Judicare non poſſunt.— Legibus Aſtringuntur, nec ultra poſſunt procedere, in Proſecutione Juſtitiæ, quod de Regibus & aliis Monarchis Principibus non convenit, quia in ipſorum Pectore ſunt Leges reconditæ, prout caſus occurrunt.—Rex Politicus ſolis Legibus ſuæ Civitatis populum *Judicat* †. If an erroneous Judgment was given before the Statute 27 Eliz. in the King's Bench, the King could not relieve his Grieved Subjects any Way, but by a Writ of Error in Parliament; neither can he out of Parliament alter the old Laws, nor make new, or make any Naturalizations or Legitimations, nor do ſome other Things. V. *Ruſhworth* II. 485.

† *Aquin.* 284, 300, 385.

the People what is their's, by Right, againſt their Conſents. Thus You have, Sir! the Formal Inſtitution of every Political Kingdom, from whence You may Gueſs at the (f) Power which a King may exerciſe with Reſpect to the Laws and the Subject. For he is appointed to protect his Subjects in their Lives, Properties and Laws; for this very End and Purpoſe He has the Delegation of Power from the People; and He has no juſt Claim to any other Power but this. Wherefore, to give a Brief Anſwer to that Queſtion of Your's concerning the Different Powers which Kings claim over their Subjects, I am firmly of Opinion that it ariſes ſolely from the Different Natures of their Original Inſtitution, as you may eaſily collect from what has been ſaid. So the Kingdom of *England* had its Original from (g) *Brute* and the *Trojans*, who (h) attended him from *Italy* and *Greece*, and became a mixt Kind of Government, compounded of

(f) Governments were by Prudence contrived to reſpect Public Good and General Convenience; the Power which the King has over the Law and the Subject, the Line, Proportion and Exerciſe of that Power is laid out by the Law of his Government, to the Obſervation whereof he is Religiouſly Sworn [5]. " Rex pro bono Regimine populi principaliter conari debet. *Aquin.* 185. ib. plura 205, 232, 237. v. *Sir Robert Atkins* of the Power, &c. of Parliament, paſſim & p. 16.

(g) The Story of *Brute* is called in Queſtion by *Buchanan*, a Learned, tho' violent *Scot*; making *Gyraldus Cambrenſis* the Author of it, and accuſing all Mankind of Folly that believe it other than a Fiction. *Leland* [an Incomparable Antiquary] has publiſhed a Vindication of the Story; and the *Welſh* are generally very unwilling to give it up for Fabulous. Tho' it be not cried up for Infallible, it is left to be believed or not, as Men pleaſe, and the ſaid Author is ſatisfied of the Probability of it. So does *Matth. Weſtminſter* [6]. E. I. owns the Story, as a Truth, in his Letter to Pope *Boniface* [7]. Mr. *Waterhouſe* has given the Story at Large, as alſo Mr. *Milton* in his Hiſtory of *England* [8], concerning the firſt Peopling of *Britain*; Mr. *Camden* has given us as diſtinct an Account as can be drawn from probable Conjectures, and as the great Diſtance of Time and Want of Records will allow. The Romantic Story of *Brutus* and his Poſterity is fairly confuted by the ſame Author: If the *Britains* are ſo fond of a Trojan Original, He has pointed out a much better claim to it, than the Story of *Brutus* can give them: For, the *Romans* (deſcended from the *Trojans*) by their Long Continuance in this Iſland, could not but have many Intermarriages with the *Britains*: Whereby many *Britains* at this Day muſt be of *Roman*, and by Conſequence of *Trojan* Extraction [9]. *Nennius*, who lived in the VIIth Cent. makes the Iſland to be firſt Inhabited by *Brito*, Son to *Aſcanius*, and Grandſon to *Æneas*, who, as He ſuppoſes, reigned in *Britain* at the Time when *Eli* [10] Judged *Iſrael*, about 1200 Years after the Flood, A. M. 2830. (about 66 Years after the Deſtruction of *Troy*, (if any certain Time can be aſſigned for ſo uncertain a Relation) [11]. *Sigebertus Gemblacenſis*, a French Monk, who lived twenty Years before *Geoffrey* of *Monmouth*, writes, that *Brute* paſt from *Gaul* into *Britain*, and *Hen. Huntingdon*, Cotemporary with *Geoffrey*, is of Opinion, that *Britain* was peopled by *Brute*. *Geoffrey* of *Monmouth*'s Liſt of the Regal Succeſſion from *Brutus*, is very diſtinct and plain; but it hath ſo many Marks of pure Invention, either of Himſelf or the Authors, from whom He pretends to tranſcribe them, that it is long ſince given up for a mere Romance by all our Learned Critics in Engliſh Hiſtory: And particularly the Biſhop of *St. Aſaph*, (W. Lloyd [12].) is of Opinion, that the Grand Lye of all, which is the Story of *Brutus*, is nothing but a Forgery to make the Engliſh Kings as nobly deſcended as the Kings of other Nations, by deriving them from the *Trojans* according to the Humour of the Age He lived in. *Mr. Norden* [13], gives in to the Probabilities of the Truth of *Brute*'s Hiſtory. Some Attempts are made upon a Defence of this Story by *Selden* [14]. This Story is reckoned Fabulous by *Sir William Temple* [15], and others. I ſhall conclude this long Article, which is rather Matter of Amuſement than Uſe, in the Words of *Livy*, the *Roman* Hiſtorian [16]. " 'Tis a Liberty always granted to Antiquity, that by " mingling Divine and Human Things together, it might make the Riſe of Cities more Auguſt and Venerable; v. *Sheringham* 8. 97. 121. 365. 381. *Samme*'s Brit. 431. 158. Camd. Brit. IX.

(h) *Comitiva*] Societas ſive Comitatus viæ. *Anglis*, Company [17]. Filio ſuo mandavit ut Sororem ſuam & comitivam ejus reverenter ſuſciperet [18]. *Matth. Paris*, An. 1249. " Pro recuperatione & defenſione jurium noſtrorum tam in ciſmarinis quàm in tranſmarinis partibus, ad quas nuper miſimus comitivam, &c. *Thwrotz*. " Perrexit cum bona comitiva militum. *Du Freſne* ad. v.

---

[5] W. *Ruſhw.* V. 2. 501. *Tyrrel* D. 11. p. 779. [6] Hiſt. Ætat. 3æ. p. 14. [7] X *Scriptt.* 2483 & ſeqq. [8] *Kennet* I. 2 & ſeqq. the Notes. [9] *Camd.* VI. [10] *Hen. Knyghton* inter X Scriptt. v. Sadler 43 & ſeqq. [11] *Du Freſne's Index.* [12] *Somner. Nicholſon* V. 2. p. 15. *Wood Athen.* V. 2. 1091. [13] Acc *Cornwall*, p. 2. [14] Annot. ad. *Polyolb.* p. 17.— Opp. III. 1738. 1817. *Camd.* B. VI. n. [15] Hiſt. Eng. p. 19. *Ken.* I. 83. a. *Tyrrell*, B. I. 6. 9. X— Scriptt. 728. 57. 2484. *Hen. Knyghton* Hiſt. Angl. Scriptt. I. 99. *Fort.* [16] Præfat. ad Hiſt. [17] *Somner.* [18] *Brompton.* (X Scriptt.) Hen. II.

of the *Regal* and *Political*. So (4) *Scotland*, which was formerly in Subjection to *England* in the Nature of a Dutchy, became a Govern-

(4) *Scotiam, quæ ei quondam ut ducatus.*] Of that Matter ſee *Guil. Malmesburienſ. de geſt. reg. lib.* 2. *cap.* 6. *Roger de Hoveden, fol.* 311. *b.* & 377. *a.* & *b.* & 461. *Matth. Paris ſub Anno* 1072. & 1175. & 244. *pag.* 208. 872. & 1124. *ſub Anno* 1252. *Matth. Weſtmonaſterienſ. ſub Anno* 1054. and what he hath with *Thomas* of *Walſingham ſub Anno* 1290. & *ſeqq.* and *Edward Hall* in his Henry 8. out of old Monuments, alſo *Walſingham, pag.* 85. 133. & 171. *Edit. Francofurt, & Florence* of *Worceſter* and *Henry* of *Huntingdon*, where they ſpeak of King *Athelſtan*, and Authority enough will appear againſt what *Buchanan* writes in *lib.* 6. & 8. *Rerum Scoticarum*, touching the Engliſh Empire. For Authorities in Law of the ſame Thing, ſee 11 *Edw.* 3. tit. Breife 473. 39 *Edw.* 3. *fol.* 35. & 36. 42 *Ed.* 3. *fol.* 2. *b.* 13 *Hen.* 4. *Brook* tit. Appeal 153. 6 *Rich.* 2. *tit.* Protection 46. 8 *Rich.* 2. *tit.* Continual Claim 13. 13 *Elizab. Dyer, fol.* 304. *a. Rot. Parlament.* 21 *Ed.* 1. in Arce London, fol. 51. & *ſeqq.* beſide divers Originals of Matters of that Nation yet remaining in the Treaſuries of *Records*. Neither is that of *Godfrey* of *Malmesburie* unneceſſary to be here remembered. He relates that when *William* II. was offended with *Malcolm* III. of *Scotland*, that he would not *ſecundum judicium Baronum ſuorum in curia ſua rectitudinem Regibus Anglorum facere*, the Scottiſh King *id agere niſi in regnorum ſuorum confinijs ubi Reges Scotorum erant ſoliti rectitudinem facere regibus Anglorum, & ſecundum judicium primatum utriuſque regni nullo modo voluit, & ſic impacati ad invicem diſceſſerunt.* He places this in 7 *Willielmi* 2. When this *Godfrey* lived I know not, his Annals begin with the Saxons, and end in 29 *Hen.* I. He hath much of Northern Matters, and the ſame that is in *Roger* of *Hoveden* often, and this very Paſſage alſo is in *Hoveden, pag.* 265 *. *Scotland* has continued a Warlike and Puiſſant Nation, between whom and Us much Blood hath been ſhed, and Hoſtilities acted; and, till they were reduced to be Homagers to this Crown, We could not be quiet. Tho' *Buchanan* denies the Fact, yet here it is, that *Scotland* was for many Years and many Kings Reigns held of the Crown of *England*, and their Kings Homagers [19]. *Edward* I. inſiſts upon it in his Epiſtle to Pope *Boniface*. Tho' true it be that *Scotland* never had an utter Eclipſe of its Ancient Crown, but that it enjoyed its own Laws; yet, if reſpect be had to thoſe [20] Services which ſome of the Kings of *Scotland* did to the Crown of *England*, as its Tenurers, It was originally a Dependency, which the Chancellor here intends by the Word [*Ducatus*] W. That the Kings of *Scotland* did Homage to the Kings of *England*, ſee the Hiſtorians quoted in the Margin, from *Edward* the Elder to *Hen.* VI. [21]. The Form ſee in *Kennet*, and *Tyrrell*, A. D. 1541. *Hen.* VIII. [22] claimed Homage and Fealty, as due to him out of an Ancient Title to that Crown; the Demand whereof He ſaid that He had Neglected a great While, becauſe of his Nephew's Minority and other kind Reaſons: His Title being by Lineal Succeſſion, and recognized for many Ages by the Kings of *Scotland*, down to the Reign of *Henry* VI. which he proved by Hiſtory, by Inſtruments of Homage, by the ſeveral Kings and divers Great Perſons, ſealed with their Seals and remaining in his Treaſury, and by Regiſters and Records, Judicially and Authentically made [23]. When *John Baliol* did Homage to *Edward* I. He made forth Letters Patent of the ſaid Homage of the ſame Date: This was Witneſſed by XVI. Biſhops, the Judges and the Greateſt Men of *England*, and XX. of the ſame Quality of *Scotland*, who, at his Requeſt, put to their Seals [24]. Dr. *Duck* [25] ſtates the Matter in Diſpute very fairly by Hiſtorical Facts and Vouchers. *John Harding* [26], a Northern *Engliſhman*, and an inveterate Enemy to the Scots, has collected whatever might tend to the Proof of that ancient Vaſſalage of *Scotland* to the Crown of *England*, and hearing of an old Record in that Kingdom, which put the Matter paſt Diſpute, he went in Diſguiſe, and with much ado brought it away, and ſhowed it to *Henry* V. *Henry* VI. and *Edward* IV. Mr. *Ridpath* has writ profeſſedly againſt *Scotland*'s being Tributary [27]. *Sir G. Mackenzie* of *Roſehaugh*, to the ſame Purpoſe [28], and aſſerts, that the Crown of *Scotland* was always independent on that of *England*. Mr. *Rapin* decides the Caſe of the Sovereignty of the Kings of *England* over *Scotland* in Favour of the *Scots*. The Proofs Pro & Con. ſee at Large in his Hiſtory [29]. Where he quotes *Anderſon*'s Eſſays for one of his Vouchers, Of King *Edward* I. taking away the Crown and Scepter of *Scotland*, the famous *Stone* of *Scone*, and burning the Records. See the ſame *Rapin* [30]. A. D. 1200. *William* King of *Scotland* did Homage to King *John*.—'Tis not known, nor determined by the *Scotch* Writers, for what Territories *William* did this Homage, the *Engliſh* infer from thence, that it was for the whole Kingdom of *Scotland*. This Inference is not altogether juſt: Beſides, it is not very likely, that this Prince ſhould voluntarily return to the Vaſſalage, from which he had been freed by King *Richard* I. before his Expedition to the Holy Land. It does not appear that there had been any Alteration in this Reſpect, ſince *Richard* I. by an Authentic Charter, had renounced his Right of Sovereignty [31]. A. D. 1549. A Subſidy was given the King (*Edw.* VI.) to aſſiſt him in the Conqueſt of *Scotland*, which is called,

* *Seld.* [19] V. *Fox* (444. & ſeqq.) & *Tyrrell* ad An. 1301. X Scriptt. 2481. 2483. & ſeqq. *Tyrrell* D. 6. *Petyt* 115. *Tyrrell* Hiſt. VI. 11. An. 975. [20] *Kennet* I. paſſim 106. 198, 9. &c. [21] Ib. 348. *Tyrrell* Hiſt. V. 323. 349. &c.— ib. Vol. 3. IX. 73. ſed v. *Rapin* V. 241. [22] *Rapin* VII. 628. [23] *Kennet* II. 232. [24] *Tyrrell* Introd. to Vol. 3. 6. & ſeqq.— ib. Pref. XVII.—ib. 90. 97.—Vol. I. Introd. XVIII. LXVII. *Fuller*, Eccl. Hiſt. Cent. XIV. 13. 3 § 1. *Spotiſwode* 48, 50. 53. *Burnet*, Hiſt. his own Times, p. 110. [25] De uſu & Authoritate juris Civilis, p. 361. [26] *Nicholſon* I. 189. [27] *Scotland*'s Sovereignty aſſerted, *Lond.* 1695. [28] Science of Heraldry, Fol. *Edinb.* 1680.— Id. *de Hominio. Nicholſon Scotch* Hiſt. Lib. [29] IV. p. 50. & ſeqq. [30] Ib. p. 107, 201. [31] Ib. III. p. 166.

Government partly *Regal*, partly *Political*. Many other Kingdoms, from the ſame Original, have acquired the ſame Form of Government; whence *Diodorus Siculus*, in his Second Book of Ancient Hiſtory, concerning the *Ægyptians*, ſays thus, " The Kings " of *Ægypt* originally did not live in ſuch a licentious Manner as " other Kings, whoſe Will was their Law: But were ſubject to the " ſame Law, in common with the Subject, and (i) eſteemed them- " ſelves happy in ſuch a Conformity to the Laws." For, it was their Opinion that many Things were done by thoſe who gave a Looſe to their own Will, which expoſed them to frequent and Great Dangers and Diſadvantages. The ſame Author in his Fourth Book writes thus; " He who is (k) choſen King of *Æthiopia* leads a Life conformably to the Laws, and behaves in every Reſpect ac- " cording to the Cuſtoms of his Country, nor rewarding, nor pu- " niſhing any one; but according to the Laws handed down from " his Predeceſſors." In like Manner he writes concerning the King of *Saba* in *Arabia Fœlix:* In the ſame Manner concerning other Kings in Ancient Hiſtory; who, purſuing the ſame Methods of Government, reign'd proſperouſly and with Reputation.

in the Act, *a Part of his Dominions* [32]. The *Scots* ſeem to have an Eye to this Diſpute, when it is ſtipulated, amongſt other Articles of the Union, that " The Crown, Scepter, and Sword of State, " the Records of Parliament, and all other Records, Rolls and Regiſters whatſoever, both Public " and Private, General and Particular, and Warrants thereof, continue to be kept as they are with- " in that Part of the United Kingdom now called *Scotland*; and that they ſhall ſo remain in all " Time coming, notwithſtanding the Union. The Act for an Union of the Two Kingdoms of " England and Scotland." (5 Annæ, cap. VIII. Art. XXIV.) v. plura *Chronica de Mailros* ſub An. 1157. (Rerum Angl. Scriptt. Tom. I.) *Camdeni* Angl. Norman. &c. Francof. M.DC.III. p. 59. l. 57. 473, 23. 512, 1. *Tyrrell*, II. B. 5. 303. 398. *Nicholſon* Scotch Hiſt. Lib. 277 & ſeqq.— *Leges Marchiarum*, or Border Laws 8° Lond. M.DCC.V. v. Pref. per tot. & ib. XXV. *Sammes'* Britt. 429. *Ruſhw.* II. 574. *Petyt* 95. *Vincent's* Diſc. Errors againſt *Brooke* 252. & ſeqq. *Hale* 200. *Burnet* Ref. II. 31, 2. Append. 106. & ſeqq. *Tyrrell*, III. Append. 137, 218. *Rapin*, I. 342, 362, 368, 370, 378, 381, 392. n.— II. 77. n. 281. & ſeqq. III. 67, 72, 98.—IV. 68, 80. VI. 421. 500. n. Upon the Contract of Marriage between *Margaret* the Daughter of *Hen.* VII. with *James* IV. of *Scotland*, a Privy Counſellor repreſented to the King, that it was not impoſſible but this Marriage might one Day give *England* a *Scotch* Sovereign. Whereupon the King replied, that ſuppoſing what he ſaid ſhould happen, the ſtrongeſt would carry it from the Weakeſt, and *Scotland* would be annexed to *England*, and not *England* to *Scotland*, ib. ut ſupra. *Rapin*, VIII. 391. v. *Sheringham* 128. & ſeqq. *Wilkins'* d. e. VI. & ſeqq. v. *Chron. Saxon.* pp. 110. 115. 154. 181. 198, 9. 206. 215. *Rapin*, XI. 103. 107. *Mad.* H. Ex. 12. 14.

(i) " Their firſt Kings did not form themſelves, as exempt from Law and reducing all to their " Abſolute Pleaſure. But, in all Things and for all Actions, they were accountable to the Laws. " They could do nothing either of Mercy or Severity, but juſt in the Method of the Law. *Diodor. Sic.* Bibl. p. 63. Ed. *Rhodomann. Hanoviæ* 1604. W. v. Mr. *Nevil.* Plato Red. p. 38.

(k) After the *Æthiopians* fell into a milder Way of Government, *Seſoſtris* being dead, they choſe him for King, by common Suffrage, who either excelled in Beauty, or Goodlineſs of Body, or Skill in Cattle, or Strength, or Wealth. W. *Herodotus* tells us, " That the *Medes* choſe their Kings " Originally for the Probity of their Manners, and in hope of enjoying the Benefits of common Ju- " ſtice; and I am apt to imagine this was the End and Practice likewiſe of Our Predeceſſors [33]." *Hottoman* [34], concerning the Kingdoms of Ancient *Gaul*, writes, that they were not Hereditary, but conferr'd by the People upon ſuch as had the Reputation of being juſt Men. *

" Quædam Regiones indignum Judicant, quod Reges in ipſorum Provincijs perpetuentur in filiis, " hoc eſt, quod Filij Regum Succedant in Regno; Sed, ipſo mortuo, elegit populus quem magis " ornatum moribus comprehendunt, ſicut fiebat de Imperatoribus (*Germaniæ* ſc.) & in *Ægypto* ad- " huc obſervatur modernis temporibus. Quæruntur enim Pueri Elegantes in diverſis Regionibus, & " præcipue in partibus *Aquilonis*, quia ſunt Staturæ proceræ & ad Militarem diſciplinam idonei. " Hi de Ærario Publico nutriuntur, exercitantur in *Gymnaſijs*, & diſciplinis Scholaſticis, in civilibus " actibus & rebus bellicis, Aſſiſtunt *Soldano* in Miniſterio, ſicut traditur, & poſt mortem ejus, qui " probati inveniuntur, ad Principatum Aſſumuntur. *Lacedæmonij*, etſi haberent Regem ſec. bene- " placiti tempus, eligebatur tamen a Sapientibus, aſſumptus de omnibus Gradibus Civium, & hoc " videbatur conſonum rationi, ut Conſenſu totius Conſilij Aſſumpti ad regimen populi fieret Rex, ut " Hodie communiter faciunt civitates *Italiæ*. *Aquin.* 303, 4. . . . . Ib. 392, 3. *Shuckford*, Con. I. 182. *Juſtin*, L. I. c. 1. *Diodor. Sic.* Hiſt. L. I. p. 28.

[32] Ib. VIII. p. 53. Capp. I. VI.

[33] *Cic.* de offic. L. 2.— Opp. V. To. IV. 1294. XII.

[34] F. G.

* V. *Buchanan* de jure regni 195.

CHAP. XIV.

The Prince abridges the Two foregoing Chapters.

Prince. YOU have, my Good Chancellor, with the Perſpicuity of Your Diſcourſe, diſpell'd that Darkneſs with which my Underſtanding was obſcured, and I now perceive plainly, that no Nation ever formed themſelves into a Kingdom by their own Compact and Conſent, with any other View than this, that they might hereby enjoy what they had, againſt all Dangers and Violence, in a ſecurer Manner than before: And conſequently, they would find themſelves diſappointed of their Intention, if afterwards the King they had ſo ſet over them ſhould deſpoil them of their Properties, which was not lawful for any of the Community to do before ſuch Appointment made. And the People would be in yet a more diſmal State, in Caſe they were to be governed by (a) *Strange* and Foreign Laws, ſuch as they had not been uſed to, ſuch as they could not approve of: More eſpecially if thoſe Laws ſhould Affect them in their Properties, for the Preſervation whereof, as well as of their Perſons, they freely ſubmitted to Kingly Government; it is plain, that ſuch a (b) Power as this, could never originally proceed from the People; and if not from them, the King could have no ſuch Power rightfully at all: On the other Hand, I conceive it to be quite otherwiſe with that Kingdom which becomes ſo by the ſole Authority and abſolute Power of the King. In this Caſe, the People become ſubject to him upon no other Terms, but to obey and be govern'd by his Laws, that is, his Mere Will and Pleaſure. Neither, Sir! has it ſlipt my Memory, what You have

(a) That is, Laws borrowed from the Conſtitution of other Countries. The *Athenians* enjoined a ſevere Puniſhment to any, who, being a Sojourner, took not the Benefit of their Laws: They were patiently to ſubmit to the Decrees enacted by the Citizens, and to obſerve all the Laws and Cuſtoms of the State, to chooſe one out of the Citizens, to whoſe Care and Protection they committed themſelves, and whoſe Duty it was to Defend them from all Violence and Oppreſſion without appealing further.— And an Action lay againſt a Sojourner who did not chooſe a Patron [1]. By the *Lex Papia* [2], Foreigners were to quit *Rome*. " Pregrinitatis reus eſt qui ſe falſo pro Cive *Romano* " geſſiſſet [3]. Civitatem Peregrinus Uſurpans veneat. Pauper accuſatus *Peregrinitatis* venit, emit " eum Dives [4]. In *France*, *Spain*, and all Countries, Strangers and their Influences are diſcountenanced by the Laws. *Sir William Temple* [5] writes, that " The whole People ſad and aggrieved, " as well as the Nobles, in an Humble Manner with Univerſal Agreement tendred an Eaſy Petition " to the King * (*William* I.) Beſeeching him, in regard of his Oath made at the Coronation, and " by the Soul of *St. Edward*, under whoſe Laws they were born and bred, that he would not " change them, and deliver them up to *New and Strange Laws* which they underſtood not [6]." One of the Clamours againſt *Henry* III. was, that he was too much addicted to Foreigners, nay he made one *Stephen de Segrave*, a Foreigner, Chief Juſtice, and *Robert de Paſſelu*, another Foreigner, his Treaſurer; afterwards, the King finding his Miſtake, turned them off, and exacted a ſevere Account from them. The Original Breaches in *Edward* II.'s Reign, and all his Misfortunes were owing to his delegating the Government to a Foreigner, *Pierce Gaveſton*. Cardinal *Woolſey* by his endeavouring to introduce the *Imperial Laws*, and by an exorbitant Uſe of his Legatine Power, loſt all and died in Ignominy and Diſgrace. 4 *Inſt.* 89. 3 *Inſt.* 208.

(b) " Prerogative is beſt ſhewed and executed in remitting, rather than exacting the Rigour of " the Laws, there being nothing worſe than Legal Tyranny. *Icon Baſilike* XXVII.

---

[1] *Potter*'s Gr. Antiqq. I, B. 1. c. X.— Ib. p. 142, 3. [2] De *Peregrinis* v. *Godw.* L. 3. c. 4. *Kennet* Ro. Antiqq. Part II, c. 23. [3] *Sueton.* Claud. c. 15. Note 6. [4] *Briſſon* Antiqq. Select. I, 13. *Pitiſc.* in *Sueton.* ut ſup.— Lexicon. v. Peregrinitas. [5] Hiſt. England 228. *Seld.* II. p. 946. *Hale* 105, 6. * Sadler p 90. 198. Wilkins p. 216. [6] V. *Sheringham* 125.

elſewhere, with ſolid Reaſons, demonſtrated in Your Treatiſe, concerning the Law of Nature, that the Power of both Kings is in effect equal; ſeeing a Poſſibility of doing Amiſs, which is the only Privilege the one enjoys above the other, can be called an Addition of Power, no more than a (c) Poſſibility to decay or die; which, as it is only a Poſſibility of being deprived of ſomething valuable, ſuch as Life or Health, is for this Reaſon rather to be called a *State of Impotency*, a real Weakneſs. "For Power (as (d) *Boetius* ob-"ſerves) is always for ſome good End or Purpoſe;" and therefore to be able to do Miſchief, which is the ſole Prerogative an Abſolute Prince enjoys above the other, is ſo far from increaſing his Power, that it rather leſſens and expoſes it. The *Bleſſed Spirits* above which are already fixed in their Seats of Happineſs, and put beyond a Poſſibility of Sinning, are, in that Reſpect, ſuperior to us in Power, who are always liable to do amiſs, and to work Iniquity with Greedineſs. It only now remains to enquire, whether the Law of *England*, to the Study whereof You invite me, be as well adapted and effectual for the Government of that Kingdom, as the *Civil Law* (by which the *Holy Roman Empire* is regulated) is generally thought to be, for the Government of the Reſt of the World. Satisfy me but in this Point by ſome clear and convincing Proof; and I will immediately apply my ſelf to the Study you propoſe, without troubling You with any more of my Scruples.

(c) Vice and Exceſſes are no proper Expreſſions of Power, but are rather Natural Imperfections; An Abſence of Power: Cruelty and Tyranny can never be Prerogatives.

Non eſt Rex qui per ſe non eſt ſufficiens, & omnibus Bonis ſuperexcellens. *

When the Luſt of Kings ſtood inſtead of Laws, and Men, being veſted with an infinite and immoderate Power, did not contain themſelves within Bounds; the Inſolence of Kings made Laws to be deſired. For this Cauſe Laws were made by the People, and Kings conſtrained to make uſe of that Right or Privilege which the People had conferr'd upon them. For they were taught by many Experiences, that it was better that their Liberty ſhould be entruſted to the Laws, than to Kings. This one Way of Government is preſcribed to Kings, otherwiſe *Free*, That they ſhould conform themſelves to the Preſcripts of Laws, and thereby divide Rewards and Puniſhments, the Greateſt Bonds of holding faſt together Human Society. "A King ſhould be a Speaking Law, and the "Law a Dumb King[9]. . . . . He that doth not receive a Government by the Will of the People, but invades it by Force, or intercepts it by Frauds, is a Tyrant. The Government of Kings is according to Nature, that of Tyrants is not. A King rules his Subjects by their own Conſent, Tyrants Reign by Force and Violence. A Kingdom is a Principality of a *Freeman* among *Free-men*: Tyranny is a Principality of a Maſter over his Slaves. For the Defence of the King's Safety the Subjects Watch and Ward; for a Tyrant Foreigners do watch to oppreſs the Subjects. The one beareth Rule for the Subjects Welfare, the other for himſelf. . . . . By how much Kings are raiſed above other Men, ſo much ſhould they imitate the Celeſtial Bodies, which infuſe on Human Affairs a Vital and bountiful Virtue of Heat and Light. . . . The King was not ſought for to reſtrain the Law, but the Law to reſtrain the King. From the Law he hath that whereby he is a King; for without the Law he would be a Tyrant[10]. . . . . No Public Calm can be certain, no Government ſecure; where the People are *pillaged* and oppreſſed.—People that are uſed like Beaſts, will act like Beaſts; and be mad and furious, when Buffeted and Starved. *Gordon*'s Diſc. on *Tacitus* V. 1. p. 56. v. *Atk.* p. 28.

. . . . Neſcit plebs jejuna timere.— *Lucan* L. 3. V. 58.

(d) I can't find the very Words as here quoted, only ſome Paſſages in Effect to the ſame Purpoſe. As, "Extrema eſt ſervitus, cùm Vitiis dediti à Rationis propriæ Poſſeſſione ceciderint[11]. Bonum "eſſe omne quod Juſtum eſt[12]. Bonum Commune dicitur Potentia à *Philoſopho* in Eth. quatenùs "intendit Debitum nobiliſſimum Finem[13]." The Senſe of this Paſſage is fully diſcuſt in *Boetius*. Lib. IV. Proſa II. and from thence, in the *Opuſculum* C. XXVI.

---

* *Aquin.* 140. 175. [9] *Buchanan* de Jure Regni 191. 207. 212. [10] Ib. 237, 239, 286. *Aquin.* p. 5. 9. 10. 17. V. *Comines*, B. VI. c. IV. p. 555. [11] *Boetius*. Proſa 2. Lib. 5. [12] Ib. Proſa 4. L. 4. [13] *Aquin.* 182.

CHAP. XV.

CHAP. XV.

All Laws are the Law of Nature, Customs or Statutes.

Chancellor. I Obſerve, Sir! that You have given Attention, and remember well what I have hitherto been diſcourſing upon, therefore You have the better Title to receive an Anſwer to Your Queſtion. Know then, that all Human Laws are either the *Law of* (a) *Nature*, (b) *Cuſtoms*, or *Statutes*, which are alſo called *Conſtitutions:* But, the Two former, when they are reduced into Writing, and made Public by a ſufficient Authority of the Prince, and commanded to be obſerved, they then paſs into the Nature of, and are accepted as *Conſtitutions* or Statutes, and, in Virtue of ſuch Promulgation and Command, oblige the Subject to the Obſervance of them under a Greater Penalty than otherwiſe they could do. Such are a Conſiderable Part of the *Civil Laws* which are digeſted in (c) *Great Volumes* by the *Roman* Emperors, and by their

4

(a) That is, the Law of all Places, Perſons and Times, without Alteration, One and the ſame Inſcription of GOD's Power, and Goodneſs. As the Law of Nature is the Law of GOD, ſo an Obligation lies on all Mankind to obſerve it. W. *Dugd.* 2. b.

(b) Cuſtoms and Uſages, as the [1] Lord *Coke* has it, make one of the main Triangles of the Laws of *England*, which are divided into the Common Law, Statute Laws and Cuſtoms. The Law of *England* is grounded upon Six Principal Grounds. (1) The Law of Reaſon. (2) The Law of GOD. (3) General Cuſtoms of the Realm. (4) Principles, otherwiſe called, *Maxims.* (5) Particular Cuſtoms. (6) Acts of Parliament [2]. The Law of *England* is ſaid to be built upon the Law of Nature, becauſe it oppoſes every Thing which is *Malum per ſe*, and promotes whatever is juſt, which is the Sum and End of the Law of Nature. W. . . . . "Conſuetudo quandoq; pro "Lege obſervatur, in partibus ubi fuerit more utentium approbata, & vicem Legis obtinet, Longæ"vi enim temporis Uſus & Conſuetudinis non eſt vilis Authoritas [3]." Where Cuſtoms are reaſonable, Juſt and Good, there they are preſumed of Great Validity, and to have a Sage Commencement, tho' we know not the preciſe Moment and Manner of it. So the Learned *Selden* [4]. Cuſtoms have been of old Time uſed throughout all the Realm, which have been accepted and approved of by our Sovereign Lord the King and his Progenitors, and all his Subjects, becauſe the ſaid Cuſtoms be neither againſt the Laws of GOD, nor the Law of Reaſon, and have been always taken to be Good and neceſſary for the Common Good of all the Realm [5]. "Pro Bono communi totius "Regni.—— Conſuetudo ex certa cauſa rationabili uſitata privat communem Legem [6]." No Cuſtom or Preſcription can take away the Force of an Act of Parliament. "Mores recepti ſunt Le"gum Nervi. Conſuetudo dat Juriſdictionem etiamſi Agatur de Cauſis meri Imperij. Conſuetudo "obſervata Legis inſtar eſt. In Antiquitatis causâ, & Præſcriptiones, Longuſq; uſus & Conſuetudo "conſiderantur." Theſe and ſuch like Rules are in the Civil Law. W. A Cuſtom is a reaſonable Act iterated and continued Time out of Mind of Man, as, Borough English, and Gavelkind: So are other Cuſtoms. Cuſtom of the Court maketh a Law of the Court. 1 Ed. IV. 6. *Seld.* III. 1726. *Davis* 32. a.

(c) * The *Digeſt*, or *Pandects* contain the Works of 27 Original Lawyers, ſome of which were before *Chriſt*; the reſt in the Emperor's Days to *Maximin.* . . . To this Tome *Juſtinian*'s Inſtitutes are added. This is a Body of the *Civil Laws* drawn up by the Emperor *Juſtinian*'s Order, and called *Digeſta* and *Pandecta*. For this Purpoſe he gave a Commiſſion to his Chancellor *Tribonianus*, who called in Sixteen Eminent Lawyers to Aſſiſt him in the Work. They extracted the beſt ruled Caſes which lay diſperſed in Two thouſand Volumes of Ancient Law Books, and threw them into one Body or Collection publiſhed in the Year 553, and called, the *Digeſts*. The Emperor gave the Authority of Law to this Collection, by a Letter or Declaration prefixed to this Work, which ſerves for a Preface. The *Digeſts* are ſubdivided into Fifty Books, which make the firſt Part of the *Roman* or *Civil Law*. They were tranſlated into *Greek*, in the Reign of *Juſtinian*. The *Digeſts* are cited in Abbreviation by ff. which Manner was taken from the *Greeks*, who called them *Pandects*, and abbreviated them by Π. Π. The *Code* is a Volume of the *Civil Law*, which the Emperor *Juſtinian* collected from all the Pleas and Anſwers of the Ancient Lawyers; it conſiſts of 12 Books, in which are the † *Reſponſa* of the Fifty Six Emperors and their Council, from *Adrian* to *Juſtinian*.

† Reſolutions.

The

[1] 1 *Inſt.* 110. b. [2] *Dr. & Stud.* c. 4. [3] *Bracton*, L. 1. c. 3. [4] Titles of Honour 714, 15. [5] *Dr. & Stud.* c. 7. [6] *Lit.* § 169. 1 *Inſt.* 113. a. * Wood's Inſt. Imp. l. p. 5. Wiſeman 88. 197. 272. 283, 4. 412.

their Authority commanded to be obſerved: Whence they obtain the Name of the *Civil Law*, in like Manner as all other *Imperial* Edicts or Statutes. If therefore, under theſe three Diſtinctions of the *Law of Nature*, *Cuſtoms* and *Statutes*, the Fountains and Originals of all Laws, I ſhall prove the Law of *England* eminently to excel, then I ſhall have evinced it to be good and effectual for the Government of that Kingdom. Again, if I clearly make out that it is as well accommodated for the Good of that State, as the *Civil Laws* are for that of the Empire, then I ſhall have made appear, that the Law of *England* is not only an Excellent Law, but that, in its Kind, it is as well Choſen as the *Civil Law*. In Proof of this, I proceed.

The *Authentiques* make a third Volume of the *Civil Law*, taken from the immediate Mouths of the Emperors, of abſolute unqueſtionable Authority; called alſo *Novellæ*, for that the Laws in them are upon Emergencies . . . . *Liber Feudorum* contains Tenures of a Military Origine[7].

The *Juriſconſults*, amongſt the *Romans*, were the Men of the Higheſt Quality, who were bred to be capable of the Chief Imployment in the State, and became the Great Maſters in the Law. Theſe gave their Opinions of all Caſes, that were put to them, freely. They were the true Lawyers among them, whoſe Reſolutions were of that Authority, that they made one *Claſſis* of thoſe Materials out of which *Trebonian* compiled the Digeſt under *Juſtinian*. V. Sir M. Hale's Pref. to Rolle's Abr.

None, in the Age he lived in, was equal to the Great *Selden*. Who was truly in our *Engliſh* Law, what the Old *Roman* Juriſconſults were in theirs. Sir M. *Hale*'s Life, p. 66, 7. Burnet, R. I. 264.

[7] W. p. 29. *Hale* 27. *Eachard*, V. 4. 209. v. *Pitiſc.* ad v. v. *Codex*, *Digeſta*, F. F. & *Pandectas*.

CHAP. XVI.

The Law of Nature is every where the ſame.

THE * Laws of *England*, as far as they agree with, and are deduced from the *Law of Nature*, are neither better nor worſe in their Deciſions than the Laws of all other States or Kingdoms in ſimilar Caſes. For, as the *Philoſopher* ſays, in the Fifth of his *Ethicks*, "The Law of Nature is the ſame, and has the "ſame Force all the World over." Wherefore I ſee no occaſion to enforce this Point any farther; ſo now, the Enquiry reſts, what the Cuſtoms and Statutes of *England* are: And, in the firſt place we will conſider and look into the Nature of thoſe Cuſtoms.

* The **Common Law** is very properly called the *Law of England*, as it is appropriated and fitteſt for the Government thereof: It has no Dependance upon any Foreign Law whatſoever, other than in Caſes allowed of by the Laws of the Land. *Foreign Precedents* are not to be objected againſt us, Becauſe we are not Subject to *Foreign Laws*. 2 *Inſt.* 98. Pref. to 8 *Coke. Fort.* XIX.

CHAP. XVII.

The Cuſtoms of England *are of great Antiquity.*

THE Realm of *England* was firſt inhabited by the *Britons*, afterwards it was ruled and (a) civilized under the Government of the *Romans*; then the *Britons* prevail'd again; next, it was poſſeſſed by the *Saxons*, who (b) changed the Name of *Britain* into *England*. After the *Saxons*, the *Danes* (c) lorded it over us, and then the *Saxons* prevailed a Second Time; at laſt, the *Normans* came in, whoſe Deſcendants obtain the Kingdom at this Day: And, during all that Time, wherein thoſe ſeveral Nations and their Kings prevailed, *England* has nevertheleſs been (d) conſtantly governed by the ſame Cuſtoms, as it is at preſent: Which

1 if

(a) This is not only to ſhew the Succeſſion of Conqueſts, but the Benefit of this particular one; for the *Romans*, the Freeſt and Braveſt State of People under the Sun; a People of Univerſal Empire and Civility, brought Learning and Manners hither. . . . Whatever was Glorious or Praiſeworthy among our Anceſtors of this Iſland, was entirely owing to the Manners, Virtue and Empire which the *Romans* introduced and obtained over us. This is part of the Notion of (*regulatum*) *Julius Cæſar* firſt viſited *Britain*, *Auguſtus* neglected it; *Claudius* being of another Opinion, ſent *Aulus Plantius*, the Prætor hither [1]; *Domitian* ſeconded him, *Adrian* built a Wall to keep the *Roman* Conqueſts from Inroads: So did [2] *Severus* and *Antoninus Pius*, by making High Walls, Ways, and other Laborious Monuments. The *Britains* were not ſet free till the Times of *Theodoſius*, the Younger, when the *Roman* Empire in *Britain* was aboliſhed after a Continuance of CCCCLXXVI Years [2]. W.

Sir William Temple [3] obſerves, that by the Conqueſt, "We gained more Learning, more Civi- "lity, more Refinement of Language, Cuſtoms and Manners, from the Great Reſort of other "Strangers, as well as Mixture of *French* and *Normans*." V. *Rapin*, I. p. 55. *Chron. Saxon.* p. 11. v. Camd. LXXXVI. & ſeqq.

(b) About the Year DC. the *Angles*, a People of *Germany*, came in upon us, and about the Year DCCCXXVII. *Egbert* being crowned King of all *Britain* at *Wincheſter*, made an Edict, that for the Future, the Kings of the *Weſt Saxons* ſhould be ſtiled, *Kings of England*. W. X. Scriptt. 449. *Somner* ad v. *Antiqui Saxones*. *Duck* 283. *Tyrrell*, I. B. 5. p. 254.

(c) *Lordane*, or *Lourdane*, a Dull heavy Fellow, a Lazy Lubber, it being a Proverbial Word taken from the Tyranny of the *Danes* over the *Engliſh*, who were forced to Labour and Till the Ground for them, while the *Danes* ſat idle and eat the Fruits of their Labours [4]. Earl *Goodwin*, in his Speech againſt the *Danes*, diſplays the extreme Pride of them, who, not content with Sharing the Kingdom with the *Engliſh*, treated them as ſo many Slaves. He call'd to their Remembrance the ſad Times, when an *Engliſhman* and a *Dane* meeting on a Bridge, the former durſt not ſtir a Step till the Latter was paſſed over. That, if an *Engliſhman* did not make a Low Reverence to a *Dane*, he was ſure to be ſoundly cudgell'd. To all theſe Miſeries he added that of the exceſſive Taxes they had been obliged to pay, particularly * **Dane Gelt**, This was the Firſt Land-Tax in *England*, and amounted to 40,000 *l.* a Year. It was afterwards called *Hydagium*, which Name remain'd afterwards upon all Taxes and Subſidies impoſed on Lands. The *Normans* called theſe, ſometimes *Taxes*, ſometimes *Tallages*, and *Auxilia*, and *Subſidia*. The *Saxon* Kings before this had their Levies of Money and Perſonal Services, towards the building and repairing Cities, Caſtles, Bridges, Military Expeditions, &c. which, from the Word **Bote**, that is, repair, were term'd **Burgh-bote**, **Brig-bote**, **Heregeld**, &c. *Rapin*, II. p. 9.—ib. p. 59. *Ingulph.* p. 65. Edit. *Fell.* * v. *Collier* Supplement ad v. Dial. de Scaccar. *Mad.* p. 27. Whitlock, H. 24.

(d) Here the Chancellor uſes a Pleonaſm, and is to be underſtood with Limitations. For neither were all the Cuſtoms or Laws of *England* reſtrained, nor were they conſtantly uſed to Govern by them. Every King, as he ſaw moſt conducive, and advantagious, took or left the *Britiſh* Laws and Cuſtoms, or ſome of them. W. Dr. *Duck* ſays [5], that, as to the Laws in *Britain*, *Cæſar* made no Innovations, that it was left to their own Kings, and that *Britain* enjoyed her own Laws. Afterwards indeed, it happened otherwiſe, and the *Roman* Laws prevailed. A Noble Author [6] writes, "That thoſe Laws and Cuſtoms, which were before the Conqueſt, are the ſame "which

---

[1] *Eachard*, II. 109. *Tyrrell*, General Introd. Vol. i. XXXI. [2] *Helvicus*, p. 99. *Duck* 289. 292. *Muſgrave*'s Antiqq. de *Geta Britannico*, 128. *Seld.* ad *Flet.* p. 480. *Opp.* II, 1057, 8. [3] p. 308. [4] *Phillips* Dict. ad v. *Spelm. Hector Boetius* Hiſt. *Scot.* L. 10. Fo. 240. § 20. *Verſtegan* 262. *Nicholſon* Pref. Iriſh Hiſt. Lib. XXXIII. *Rapin*, II. p. 10.—p. 59. *Tindal* ib. [5] p. 287. [6] *Lord Clar.* Survey of the *Leviathan*, c. 24. p. 110.

if they were not above all Exception Good, no Doubt but (5) ſome or other of thoſe Kings, from a Principle of Juſtice, in Point of Reaſon, or mov'd by Inclination, would have made ſome Alteration or quite aboliſhed them, f (6) eſpecially the *Romans*, who govern'd

" which this Nation or Kingdom have been ever ſince governed by to this Day.". *Sir William Temple* writes [7], " That no Change of Law happened by the *Danes*."

(5) *Aliqui Regum,*] But queſtionleſs the *Saxons* made a Mixture of the *Britiſh* Cuſtoms with their Own, the *Danes* with old *Britiſh*, the *Saxon* and their own, and the *Normans* the like. The old Laws of the *Saxons* mention the *Daniſh* Law (Danelage) the *Mercian* Law (Mercenlage) and the *Weſt Saxon* Law (Weſt-Saxonlage) of which alſo ſome Counties were governed by One, ſome by another. All theſe being conſidered by *William* I. comparing them with the Laws of *Norway* (which he moſt of all affected, mainly, as I think, becauſe by them a Baſtard of a Concubine, as himſelf was, had Equal Inheritance with the moſt legitimate Son. You may ſee for it *Roger de Hoveden* (fol. 347, & 425) he *quaſdam reprobavit* (as the Words of *Gervaſe* of *Tilburie* * in his Dialogue *de Scaccario* are) *quaſdam autem approbans illis tranſmarinas* Neuſtriæ *leges quæ ad regni pacem tuendam efficaciſſimæ videbantur adjecit*, but ſo indeed, that ſuch Laws as he in Writing allow'd, are by Denomination from the greater Part called *bonæ & adprobatæ antiquæ regni leges*, by *Matth. Paris* in his MS. Life of *Fretherique* Abbot of *St. Albans*, and *leges Edwardi Regis quæ prius inventæ ſunt & conſtitutæ in tempore Adgari avi ſui*, by *Roger* of *Hoveden*, and *Leges equiſſimi Regis Edwardi*, by *Ingulphus* Abbot of *Crowland*, who lived under the Conqueror, and brought a Copy of them from *London* to his Abbey, as he remembers in his printed Story. And in a MS. Copy, communicated to me, amongſt divers other, by that living Treaſure of Antiquity and moſt exquiſite Monuments, my Noble and much deſerving Friend *Sir Robert Cotton*, and continued by *Peter* of *Blois*, after that which is in the Print, ſucceed thoſe Laws of *William* I. there ſpoken of with this Title in broken French, **Ces ſont leis & les Cuſtumes qui li Reys** William **grantaſt a tut le puple de Engleterre apres la conqueſt de la terre ice les meiſmes que le Reys** Edward **ſun Coſin tint devant lui. Ceo eſt a ſavoir, pais a ſaint Egglife, &c.** The Context of them throughout being much corrupted. They were, you ſee, called St. *Edward*'s Laws, and to this Day are. But clearly, divers Norman Cuſtoms were in Practice firſt mixt with them, and to theſe Times continue. As ſucceeding Ages, ſo new Nations (coming in by a Conqueſt, although mixt with a Title, as of the *Norman* Conqueror, † is to be affirmed) bring always ſome Alteration. By this well conſidered, That of the Laws of this Realm being never changed, will be better underſtood ‡. W. 156.

Tho' it cannot be ſaid that the *Britains*, *Romans*, *Saxons*, or *Danes*, did Change the Laws univerſally: Yet, that ſome of them were chang'd for their OWN Stability is moſt true. It is likely that the Laws in Uſe amongſt our Anceſtors, which are to be underſtood in the forementioned Senſe, were the Laws, which for the moſt Part and the longeſt Time were the Laws here under all Governments. W. v. Mr. *Cooke*'s Arg. Anti-Norm. LIV. & ſeqq. He there quotes Florent. Wigorn. Fo. 650. *Brompton* 997, 8. int. X. Script. vid. Pref. to 3 *Coke*, Fo. 4. Sadler 50. 237, 8. 240.

f (6) *Et maximè Romani,*] Underſtand not this neither Otherwiſe, but that the *Romans* had their Laws in ſuch Parts of this Land, as they had their moſt Civil Government in. I mean in Colonies hither deduced. For every Colony was but as an Image of the Mother City, with like Holy Rites, like Courts, Laws, Temples, Places of public Commerce, and for the moſt part with *Duumviri* inſtead of Conſuls, and *Ædiles* and *Decuriones* in Lieu of a Senate: And it is clear that divers Colonies from *Rome* were in *Britain*, as at *Camalodunum* (now *Maldon* in *Eſſex*) that was deduced to be " *Subſidium adverſus Rebelles* (as *Tacitus* ſays) *& imbuendis Socijs ad Officia Legum.*" And an old Inſcription remembers one *Aurelius Baſſus* to be " *Cenſitor Civium Romanorum Coloniæ Victricenſis* " *quæ eſt in Britannia Camalodunum.*" At *York* was alſo a Colony. An old Piece of Money of *Severus*, thus,

COL. EBORACVM. LEG. VI. VICTRIX. [*Camd.* 718.]

Another Inſcription is juſtifying the ſame in *Camden*, *pag.* 572. Although *Aurelius Victor* calls it *Municipium* in his Life of *Severus*. Likewiſe one was at *Cheſter*, anciently called *Devana*, *Deva*, or *Devuana*, (as we ſee in *Ptolomy* and *Antoninus*) from the River *Dee*. Witneſs an old Coin of *Septimius Geta* thus inſcribed.

COL. DIVANA LEG. XX. VICTRIX. [*Camd.* 558.]

And a Fragment of a Stone in *Bathe*'s Walls hath

DEC. COLONIÆ GLEV. VIXIT AN. LXXXVI. [*Camd.* 235.]

Glev, is *Gloceſter*, as the moſt Learned *Clarentius Camden* teaches. Some think *Colcheſter* had a Colony too. But here are enough to ſhew, that the Laws of *Rome* were uſed in *Britain*, as in other Places where the Romans conquered. *Seneca ad Albinam*, *cap.* 7. " *Hic Denique populus Co-* " *lonias in omnes Provincias miſit, ubicunq; vicit Romanus habitat;*" and *Gildas* of this Land, " *Non* " *Britannia ſed Romania Cenſebatur.*" So one anciently Speaking to *Mars*, *Romulus*, and *Claudius* (under whom the firſt Colonies were deduced hither) *in Catalect. vet. Poet. lib.* I. *Tit.* 7.

Cernitis ignotos Latia ſub lege Britannos. v. Dr. *Duck* 288. *Spelm.* R. 101.

After *Claudius*, the Britons began to Learn the Arts, to exceed the Gauls in Wit and Learning, and they that at firſt did " *Linguam Romanam Abnuere* (as *Tacitus* ſpeaks in the Life of *Agricola*) did

[7] P. 80. * *Gerv. Tilb.* de Scaccar. *Mad.* p. 30. † *Atk.* D. P. p. 20. *Seld.* III. 1334. *Mr. Cooke* XLVII. ‡ Seld.

governed all the Reſt of the World in a Manner by their own Laws. Again, ſome of the aforeſaid Kings, who only got and kept Poſſeſſion of the Realm by the Sword, were enabled by the ſame Means to have deſtroyed the Laws and introduced their Own. Neither the Laws of the *Romans*, g (7) which are cried up beyond all others

" did at length *Eloquentiam concupiſcere. Inde etiam* (ſays he) *habitus noſtri honor & frequens toga*; " *paulatimq; diſceſſum ad delinimenta vitiorum porticus & Balnea & Conviviorum elegantiam, idq;* " *apud imperitos humanitas vocabatur, cum pars Servitutis eſſet.*" And this is ſpoken of Natural Britons, not Colonies. They affected, we ſee, Roman Language, Rhetoric, Roman Habit, Roman Pleaſures, Diet, and the like. Neither needed *Tacitus* to have mentioned their Affecting the Laws of *Rome*, when they were Subject to them as a Conquer'd People. And no Doubt is, but they that imitated their Conquerors, and Neighbour Colonies in the Reſt, were not Backward in Affecting thoſe Laws, for which the Languages and Rhetoric were moſt Uſeful. *Juvenal* ſpeaking of *Gaul*, which he calls in *Satyr.* 7—— *Nutricula Cauſidicorum*, ſays in *Satyr* 15.

Gallia Cauſidicos docuit facunda Britannos,
De conducendo loquitur jam Rhetore Thule.

The Eaſier might the Uſe and Study of the Laws of *Rome* be received here, after this *Claudius* his Conqueſt; in regard that thoſe which before and in ancient Time had the Determining of Controverſies, and the Learning of that Kind in their Hands, were by him forbidden to uſe any longer their Religion, for which they were moſt of all reverenced and regarded. I mean the *Druides*. And when their Holy Rites were prohibited by the Emperor, it's likely enough that the Nations governed by them in Point of Law, (as the *Gauls* and *Britains* were) grew regardleſs, at leaſt remain'd nothing ſo reſpectful of them as before, and ſo became prone to receive the Laws of *Rome*, which had both conquer'd them, and alſo taken away the Reverence before given to the *Druides*. That the *Druides* before *Claudius* were the Lawyers, and determin'd Controverſies, I. *Cæſar* is Witneſs, *Lib.* 5 & 6 *de Bello Gallico*, compar'd with the Catholic Opinion in Antiquity of an Identity (at leaſt in their Office, Actions and Learning) in *Gaule* and *Britain*. That *Claudius* took away their Religion, *Sueton.* is Author in his Life, *cap.* 25. " *Druidarum Religionem apud Gallos diræ* " *immanitatis, & tantum Civibus ſub Auguſto interdictam, penitus abolevit.* With him agrees *Seneca* in his *Apocolocyntoſis*. It may well enough be imagined that the taking it away in *Gaule* extended to *Britain*, which was both the Nurſery of it, and Mother too, as *Julius Cæſar* writes. If only to *Gaule*; yet it's probable enough that the Druides in Britain could not but ſuffer by it, at leaſt in Reputation. For that of *Pliny* * *Nat. Hiſt. Lib.* 30. *cap.* 1. " *Tiberij Cæſaris Principatus* " *ſuſtulit Druidas Gallorum*;" it is to be referr'd only to Rome, as *Lipſius* well takes it in *Comment. ad Tacit. Annal.* 12. *num.* 98. and in ſuch Senſe as *Sueton.* ſpeaks of *Auguſtus* his forbidding them *tantum Civibus*. And indeed altho' after *Claudius*, mention be in *Tacitus*, *Lampridius* and *Vopiſcus* of them, yet ſhall you not find any Sign of their Legal Power extant either in thoſe or in *Ammianus Marcellinus* that ſpecially remembers them, but only attributes a Study of the Myſteries of Nature and a Pythagorical Learning to them under *Conſtantius* and *Julian*, as you ſee in his 15th Book. For the Matter of Colonies before ſpoken of; he that deſires accurate Inſtruction of their Nature and particular Rights may ſee, beſides what ſuch as Writing of the *Roman* State univerſally have of it, *Lipſ. de Magnitud. Romana Lib.* 1. *cap.* 6. And *Marc. Velſer. lib.* 2. *Antiquit. Auguſtæ Vindelicorum*. Seld. The Senſe here muſt be alſo underſtood with Allowances. The *Romans* were a People wont to direct mighty Wars, to raiſe and depoſe Great Kings, to beſtow or take away Empires, they ruled the World or directed its Rule; they were a Nation, *Natam inſtaurandis reparandiſq; bellis*, as *Livy* has it; they impoſed Conditions upon the Vanquiſh'd, by the Law of Arms [8]. Which Conquerors cannot more ſignally do, than by Change of Laws and Language, both which were done [9]; and it is probable, that it is from the *Romans*, that our **Old Laws** and **Records** of the Courts are ſtill in *Latin:* As, from the *Normans*, that our Pleadings and Books of Law were, and are yet, in *Norman French*. More of this ſee in *Selden* ad *Flet.* Cap. 4— *Opp.* To. 2. 1053. Where he quotes *Ethelwerdus* de Geſt. R. *Angliæ*, L. 1. c. 1. Scriptt. poſt *Bed.* 832. *Herodian.* 3. de *Geta*. *Bed.* Eccl. Hiſt. Lib. 1. cap. 11. & in Epit. Hiſt. *Anglic.* Chronologia Vetus *Anglo-Saxonica*, p. 507. v. *Tyrrell*'s General Introduct. I. XXXI. CXXVII. *Sheringham* 390.

g (7) *Leges Civiles in quantum Romanorum inveteratæ ſunt,*] The Antiquity which he means of Our Laws before the Civil of *Rome* is only upon theſe Conditions. Firſt, That the Story of *Brute* be to be credited, and then that the ſame Kind of Law and Policy hath ever ſince continued in *Britain*. That Story ſuppoſes him here CCC Years and more before *Rome* Built: But (with no Diſparagement to our Common Laws) we have no Teſtimony touching the Inhabitants of the Iſle, before *Julius Cæſar*, nor any of the Name of it till *Polybius*, in *Greek*, nor till *Lucretius* in *Latin*. *Polybius*, *Lib.* 3. ſpeaks of the *Britiſh* Iſles, and *Lucretius*, *Lib.* 6. hath *Cælum Britannum*. Neither is the Book *de Mundo* attributed to *Ariſtotle* of like Age with the falſly ſuppos'd Author. In that *Albion* is ſpoken of, but *Polybius* was before that was ſpoken. If I deceive not my ſelf. All Teſtimony of latter Time; made of that which long ſince muſt be, if at all it were, is much to be ſuſpected. And though the *Bards* knew divers Things by Tradition, which they only ſung, and ſo a ſpecious Argument is made uſually for that Common Story, becauſe they ſung it; yet I ſee not why any, but one that is too Prodigal of his Faith, ſhould believe it more than Poetical Story, which

* Var. To. 3. 297. [8] V. *Liv.* Dec. 1. IX. 3. [9] *Hale* 80.

others for their Antiquity; nor yet the Laws of the *Venetians*, however famous in this Reſpect, their Iſland being not inhabited ſo early as *Britain*; neither was *Rome* itſelf at that Time built;) Nor in ſhort, are the Laws of any other Kingdom in the World ſo venerable

which is all one (for the moſt part) with a Fiction. For what were *Bards*, but ſuch as ſung the Praiſes of old ſuppoſed *Heroes* at their Pleaſure? As *Athenæus* and *Marcellinus*, of them. And for latter Authority, you may ſee in *Leg. Howeli Dha. cap.* 25. That the Chiefeſt Dignity amongſt them was the **Pendert** * of the Country, whoſe Place was of Great Eminence before others in the Welſh Court, and his Office (when the King was pleas'd to hear any Songs) was "*Duo Car-*"*mina ſcilicet unum de Deo alterum de Regibus in interiore parte aulæ Decantare:* Nor he nor the reſt were bound to Truth of Story, but free to uſe Invention, which they did in making a Founder of the *Britiſh* Name out of a Community of Sound. 'Twas as eaſy to fetch *Brute* out of *Brutaine*, as it's often called, as it hath been to make *Francio* out of *Francia* or *Franci*, *Hiſpanus* or *Hiſpalus* out of *Hiſpania*, *Scota* out of *Scotia*, *Angela* for a Queen out of *Anglia*, *Bato* out of *Batavia*, *Italus* out of *Italia*, and divers ſuch which are all mere Fictions or Impoſtures. Scarce indeed is there a Nation in *Europe*, whoſe Deduction from a like Name of the firſt Author, is of ſufficient Credit. All Teſtimonies any Thing near the ſuppos'd Time of thoſe firſt Authors being loſt. This Writer ſtands on *Brute*'s Arrival, and ſpeaks of it *Cap.* XIII. Yet if that would make ſo much for this Side of Antiquity of our Laws, much more is to be had from the Ancienter and true Origination of the *Britains*, which is from *Japhet* and his Poſterity. See *Camden.* And in the *Greek Scaligeran* Chronicle of *Euſebius*, the *Britiſh* Iſles, with all the Weſt, are given by *Noah*'s Laſt Will and Teſtament to *Japhet*; but ſo is *Italy* too, and the reſt of *Europe*. This Way, might an equal ſtrong Argument be for the like Antiquity of Both Laws; of thoſe of *Italy* and *Britain*. And it would be ſuch a one as this Author uſes from *Brute:* For queſtionleſs, if *Japhet* and his Poſterity poſſeſs'd theſe Parts of *Europe* (as they did) their Government was not without Laws. But in Truth, and to ſpeak without perverſe Affectation, all Laws in general are originally equally ancient. All were grounded upon Nature, and no Nation was, that out of it took not their Grounds; and Nature being the ſame in all, the Beginning of all Laws muſt be the ſame. As ſoon as *Italy* was peopled, this Beginning of Laws was there, and upon it was Grounded the *Roman* Laws, which could not have that diſtinct Name indeed till *Rome* was built, yet remain'd always that they were at firſt, ſaving that Additions and Interpretations, in ſucceeding Ages increaſed, and ſomewhat alter'd them by making a *Determinatio Juris Naturalis*, which is nothing but the *Civil Law* of any Nation: For although the Law of Nature be truly ſaid Immutable, yet it is as true that it's limitable, and limited Law of Nature is the Law now us'd in every State. All the ſame may be affirmed of our *Britiſh* Laws, or *Engliſh*, or other whatſoever. But the Divers Opinions of Interpreters proceeding from the Weakneſs of Man's Reaſon, and the ſeveral Conveniencies of Divers States have made thoſe Limitations, which the Law of Nature hath ſuffer'd, very different. And hence is it that thoſe Cuſtoms, which have come all out of one Fountain, *Nature*, thus vary from and croſs one another in ſeveral Commonwealths. Had the *Britains* received the X or XII *Tables* from *Greece* (which in *Rome* was, as *Livy* ſays, "*In immenſo aliarum ſuper alias Acervatarum Legum Cumulo,* "*fons omnis publici privatiq; Juris*)" clearly the Interpretations and Additions, which by this Time would have been put to them here, muſt not be thought on as if they would have fell out like the Body of the *Roman* Civil Law. Divers Nations, as divers Men, have their Divers Collections, and Inferences; and ſo make their divers Laws to grow to what they are, out of one and the ſame Root. Infinite Laws we have now that were not thought on D. Years ſince. Then were many that D. Years before had no Being, and leſs Time forward always produced divers new; the Beginning of all here being in the firſt Peopling of the Land, when Men by Nature being Civil Creatures grew to plant a Common Society. This rationally conſidered, might end that Obvious Queſtion of Thoſe, which would ſay ſomething againſt the Laws of *England* if they could. 'Tis their Trivial Demand, *When and how began your Common Laws* †*?* Queſtionleſs it's fitteſt anſwer'd by affirming, when and in like Kind as the Laws of all other States, that is, *when there was firſt a State in that Land, which the Common Law now Governs:* Then were natural Laws limited for the Conveniency of Civil Society here, and theſe Limitations have been from thence increaſed, altered, interpreted and brought to what they now are; although perhaps (ſaving the merely immutable Part of Nature) now, in regard of their firſt Being, they are not otherwiſe than the Ship, that by often mending had no Piece of the firſt Materials, or as the Houſe that's ſo often repaired, "*Ut* "*nihil ex priſtina materia ſuperſit,*" which yet (by the Civil Law) is to be accounted the ſame ſtill, as we ſee in *π. tit. de legat.* I. l. 65. *ſi ita* § 2. Little then follows in Point of Honour or Excellency ſpecially to be attributed to the Laws of a Nation in General, by an Argument thus drawn from Difference of Antiquity which in Subſtance is alike in all. Neither are Laws thus to be compar'd. Thoſe which beſt fit the State wherein they are, clearly deſerve the Name of the beſt Laws. And none are beſt or worſt but *ſecundum quid.* But upon this Ground more to the Purpoſe might have been ſaid for the *Engliſh* Common Laws compar'd with the Civil of *Rome.* For it appears that the Emperors from *Juſtinian* who died in D.LXV. of *Chriſt*, until *Lothar* the II. in the Year CIↃ.CXXV. ſo neglected the Body of the Civil Law (which now againſt an expreſs Conſtitution of *Juſtinian*, commanding that it ſhould not be read nor taught in any Place ſaving *Rome*, *Berytus*, and *Conſtantinople*, is profeſt in every Univerſity,) that all that Time none ever profeſt it.

* *Sel.* III. 637. † *Atk.* D. P. p. 21. *Cowell*, Inſt. 24, 5. *Plato Red.* 27.

nerable for their Antiquity. So that there's no Pretence to ſay, or inſinuate to the contrary, but that the Laws and Cuſtoms of *England* are not only *Good*, but the *very Beſt*.

But when *Lothar* took *Amalfi*, he there found an old Copy of the *Pandects*, or *Digeſts*, which as a precious Monument he gave the *Piſans* (by Reaſon whereof it was called *Litera Piſana*) from whom it hath been ſince tranſlated to *Florence*, where in the Duke's Palace it is never brought forth but with Torch-light and other reverence. Under that *Lothar* began the Civil Law to be profeſs'd at *Bologna*, and *Irner* or *Werner* (as ſome call him) firſt made Gloſſes on it about the Beginning of *Frederic Barbaroſſa* in CIↃ.C.L. of Chriſt, and *Bologna* was by *Lothar* conſtituted to be *Legum & Juris Schola una & Sola*. And this was the firſt Time and Place of Profeſſion of it in the Weſtern Empire. You may ſee *Odofredum apud Sigonium de Regno Italiæ, Lib.* 11. & 7. & *Paul. Merul. Coſmogr. Part* 2. *lib.* 4. *cap.* 23. Why were they ſo neglected near DC. Years in the Empire, if their Excellency were ſo beyond others, as is uſually ſaid by many, that, to the Purpoſe, know nothing of either them or Ours? This Part of Story of them I have noted elſewhere in the Preface to the *Titles of Honour*. And clearly you ſee the Profeſſion of them is not ſo ancient in the Weſtern Empire, as the Lateſt of Time, to which ſome moſt ignorantly refer the Beginning of the Common Law; I mean as the Norman *William*, who arrived in the Year CIↃ.LXVI. I think not, that good Diſcretion can out of any of this or the like add much Honour to, or detract from either *Common* or *Civil* Law; yet it's fit to be remembred in Anſwer of ſuch as ignorantly fetch a Reaſon out of the Antiquity of the Profeſſion of the one. As if the Profeſſion begun under *Lothar* and ſince thus continued, were not merely new, and not a Recontinuance of what was in Uſe under *Juſtinian*. But hereof too much. v. † *Wilk. Nicholſ.* Pref. III. IV. That which we call the **Common Law** is, out of Queſtion, no leſs Ancient than the Beginning of Differences betwixt Man and Man, after the firſt Peopling of this Land; " It being no other than Pure and tried Reaſon [10]. The " Abſolute Perfection of Reaſon [11]. The Ground thereof is beyond the Memory or Regiſter of any " Beginning [12]." V. *Dugd.* cap. III. concerning the Antiquity of our Laws in England. Dr. *Duck* [13] impugns our Author in this Chapter. V. *Fort.* Pref. XV. XIX. XXVIII. *Hale* H. Chap. IV. Touching the Original of the Common Law of *England*, v. Ib. pp. 2. 24. 56. 164. *Ruſhw.* I. 527, 8. *Cic.* de LL. *Davis* 23.—*Verburg.* Tom. 4. 1197.

† *Seld.* [10] *Plowd.* 316. [11] 2 *Inſt.* 179. [12] *Pref.* to 8 *Co.* [13] P. 293, XI.

CHAP. XVIII.

How Statutes *are made in* England.

IT only remains to be enquired whether the **Statute Law** of *England* be good or not. And, as to that, it does not flow ſolely from the Mere Will of one Man, as the Laws do in thoſe Countries, which are Govern'd in a Deſpotic Manner; where ſometimes the Nature of the Conſtitution ſo much regards the ſingle Convenience of the Legiſlator, whereby there accrues a great Diſadvantage and Diſparagement to the Subject. Sometimes alſo, thro' the Inadvertency of the Prince, his Inactivity and Love of Eaſe, ſuch Laws are unadviſedly made as may better deſerve to be called Corruptions, than Laws. But, the **Statutes** of *England* are Produced in quite another Manner: Not enacted by the Sole Will of the (a) Prince, but, with the concurrent Conſent of the whole Kingdom, by their *Repreſentatives* in *Parliament*. So that it is morally impoſſible but that they are and muſt be calculated for the Good of the People: And they muſt needs be full of Wiſdom and Prudence, ſince they are the Reſult, not of (b) one Man's Wiſ-

I dom

(a) V. *Tyrrell*, III. Append. 69—71. *Ruſhw.* II. 485.

(b) The High Court of *Parliament* conſiſts of the King's Majeſty ſitting there in his Royal Politic Capacity, and of the Three Eſtates of the Realm, viz. Of the Lords Spiritual, in Number Twenty-ſix; who ſit there by Succeſſion, in Reſpect of their Counties, or Baronies, Parcel of their Biſhopricks, and they are *Homagers* to the Kings of *England* for ſuch their Baronies: As ſuch, they hold in their Politic Capacity, and ought, *ex debito Juſtitiæ*, to have a Writ of Summons, when any Parliament

dom only, or an Hundred, but ſuch an Aſſembly as the *Roman Senate* was of Old, more than Three hundred ſelect Perſons; as thoſe, who are Converſant in the Forms and Method of Summoning them to *Parliament*, can more diſtinctly inform You. And, if any Bills paſt into a Law, enacted with ſo much Solemnity and Foreſight, ſhould happen not to Anſwer the Intention of the Legiſlators: They can immediately be amended and repealed, in the Whole or in Part, that is, with the ſame Conſent and in the ſame Manner as they were at firſt enacted into a Law. I have thus laid before You, my Prince, every the Species of the Laws of *England*, You will of Yourſelf eaſily apprehend their Nature, whether they be good or not, by comparing them with other Laws: And, when You will find none to ſtand in Competition with them, You muſt acknowledge them to be, not only Good Laws, but ſuch, in all Reſpects, as You Yourſelf could not wiſh them to be better.

Parliament is to be holden.— The Lords Temporal, who ſit there, by reaſon of their Dignities, by Deſcent or Creation, the Number uncertain: Every one of theſe being of *full Age*, and not otherwiſe diſqualified [2], ought to have likewiſe a Writ of Summons.— The third Eſtate conſiſts of the *Knights* and *Commiſſioners* of Shires, *Citizens* and *Burgeſſes*, reſpectively elected by the Shires, Cities and Burghs, by Force of the King's Writ, in Number, ſince the Union, Five hundred fifty-eight.— By the Stat. [1 *H.* V. c. 1.] It is enacted, "That the Knights of the Shires be reſident within "the Shire where they ſhall be choſen: The Knights, Eſquires, and others which ſhall be Elec- "tors be alſo reſident within the ſame Shires. It is ordained and eſtabliſhed that the Citizens and "Burgeſſes be choſen Men, Citizens and Burgeſſes, reſiant, dwelling and Free in the ſame Cities "and Boroughs."— The *Stat.* [8 *Hen.* VI. cap. 7.] "Provides, ordains and eſtabliſhes, That "the Knights of the Shire ſhall be choſen in every County by People reſident in the ſame Counties, "whereof every one of them ſhall have Land or Tenement to the Value of Forty Shillings by the "Year at the Leaſt above all Charges [3]". V. 9th of the late *Queen*, Chap. 5. *An Act for Securing the Freedom of Parliaments by the farther Qualifying the Members to ſit in the Houſe of Commons.*— Other Acts of Parliament relating to this Subject, ſee in the *Readings on the Statutes*, Title, *Parliament.*— Members of Parliament ought to be Men of Honour, Experience, Integrity, Fortune, without the View of Private Advantage, freely choſen, and thought free from all Pre-engagements [4]. "The *Parliament*, ſays *Sir Edward Coke*, is the Higheſt and moſt Honourable, and Abſolute "Court of Juſtice in England—" *Conſultorum virorum.*] Ammianus Marcellinus, writing of Men of approved worth, calls them, *conſulto Conſilio cognitos.*— In many Caſes, Acts of Parliament ſucceed not long in Credit, or Duration; as, when they are Effects of mere Power or Advantage, ſeparate from legal Reaſon or Juſtice. Alſo, when they are Huddled up in haſte, without due Conſideration what Remedy they intend. W. [5] V. *Atkins* P. p. 17, 34 *.

"*Parliamentum*] Curia apud nos Suprema: Magnum trium Ordinum Regni Concilium, vel "Conventus, ut cum Rege de rebus arduis conſultent. *Colloquium* quandoq; dictum, & propriè; "nam a Gallico (*parler*) venit, quod loqui ſignificat. Vox huc a *Normannis* advecta, nec antèà "*Anglis* Nota, quibus Concilium illud interdum, **Michel Gemot**, i. e. *Synodus Magna:* interdum "**Witena Gemot**, i. e. *Sapientium Conventus*; Item, **Michel Sinoth** & ſimiliter Nuncupatum. *Somner*, V. *Tyrrell*, I. Int. CVIII.

---

[2] 30 C. 2. (*Stat.* 2.) c. 1. *Keb.* p. 1486. [3] V. *Stat.* 7 H. IV. 15. 10 H. VI. 2. 13 H. VI. 15. [4] *Plowd.* 388. [5] 4 *Inſt.* 1. 12. 35. & alibi. * V. The Law of Elections laſt Edit. 8°. Lond. 1734.

CHAP. XIX.

The Difference between the Civil Laws and the Laws of England.

ONE Thing only remains to be explained, concerning which You have raiſed ſome Scruples, That is, whether the Laws of *England* are to be looked upon ſo uſeful, ſo well accommodated for the particular Conſtitution of *England*, as the *Civil Imperial Laws* are for that of the Empire. I remember a Saying of Your's,

Your's, My Prince, that *Compariſons are Odious*; and therefore, I am not very Fond of Making them: You will ſee better Reaſons whereby to form Your Judgment, and which of the two Laws may deſerve the Preference, by Conſidering wherein they differ, than by taking my Opinion in the Matter upon Truſt. Where they agree, they are equally Praiſe-worthy; but in Caſes where they differ, that Law which is the moſt excellent in its Kind, after mature Conſideration, will eminently appear ſo to be: Wherefore, I ſhall produce ſome ſuch Caſes, that you may weigh them in an Equal Ballance, and thereby know for certain, which Law is the more juſt and rational in its Deciſions: And firſt, I ſhall propoſe ſome Inſtances of Caſes, which appear to me the moſt Conſiderable.

CHAP. XX.

Trial of Cauſes by Witneſſes and a Jury.

WHERE any have a Controverſy depending before a Judge; and they come to a Trial upon the Matter of Fact, which thoſe who are skilled in the Laws of *England*, Term the (a) **Iſſue of the Plea** in Queſtion: The Iſſue of ſuch Plea, by the (b) Rules of the *Civil Law*, is to be proved by the Depoſition of Witneſſes, and two Witneſſes are held ſufficient: But, by the (c) *Laws of England*, the Truth of the Matter cannot appear to the Judge, but upon the Oath of Twelve Men of the Neighbourhood, where the Fact is ſuppoſed to be done. Now, the Queſtion is, which of thoſe two Ways of Proceeding, ſo different, is to be eſteemed the more rational and effectual for the Diſcovery of the Truth. That Law which takes the beſt moſt certain Way of Finding out the Truth, is in that

1 Reſpect

(a) What the Common Lawyers call (after *Appearance*, *Declaration*, and *Defendant's Plea*,) The **Iſſue of the Plea**, is by the *Civilians* termed, *Litis Conteſtatio*, *Cauſæ ſtatus*, *Compoſitio*, &c. *Quintilian* names it, *Litis Productio*. The Iſſue of the Plea reſults from the **Writ**, which runs in the *King*'s Name, and is ſued out as of *Right*, by the Party griev'd, and contains a ſhort State of his Demand, whether it be of Lands, Money, Goods, or the Like, or Satisfaction for Injuries done to his Perſon, or to his Lands, or Goods, or for Breaches of Contract, &c. upon which the Party complained of is ſummoned to appear and anſwer ſuch Demands.

Litium Cardo] "Locus ille in quo eſt *tota Controverſia*, & *Cauſæ ſtatus*: Præcipuum & verum "Litis Punctum [1]." The Matter of Truth is to be tried by a **Jury** of Twelve Men, as the Judges are to determine the Queſtion in Law, either upon *Demurrer*, *Special Verdict*, or *Exceptions*. W. v. *Calvin* ad v. *conteſtatio Litis*. —— *Litem conteſtari*. * Cic. XVI. *Att.* 15. v. *A. Gell.* 923. a. *Pitiſc.* ad v. *Lis*.

(b) In ſome Caſes ſingle Witneſſes are allowed; yet, in full Proofs of Facts, Two, at leaſt, are required as ſufficient. This the *Civil Laws* had from the *Moſaic* Law.— "At the Mouth of Two "Witneſſes, or at the Mouth of three Witneſſes ſhall the Matter be eſtabliſhed." *Deut.* XIX. 15. *Matth.* XVIII. 16.

(c) Over and beſides what Witneſſes may be produced, the Law enjoins the **Sheriff** to ſummon a **Jury** of XII Men, *Liberi & Legales Homines*, *de Vicineto*, *viri Fide Digni*, Twelve honeſt and lawful Men of the Neighbourhood, near where the Fact in Controverſy was ſuppoſed done and tranſacted: Who, being preſumed beſt to know the Truth, are to paſs, upon their Oaths, their Verdict upon hearing the Witneſſes, who are openly examined, upon their reſpective Oaths, before the Accuſed or Adverſe Party, Face to Face, what they know or believe to be the Truth.— The Special Qualities of Jurymen are limited by ſundry Statutes, according to the Nature of their Enquiry. W. *de Vicineto*] Any Place within the County or Hundred. Which, in a large Senſe, is the Neighbourhood. *Vicinus facta vicini præſumitur ſcire* [2]. Every Trial ſhall be out of that Town; &c.

---

[1] *Quintil. Inſt.* Var. 885. * L. 16. ad Att. Ep. 15. V. To. 3. 729. a. [2] *Hawkins'* P. C. II. c. 23. § 92. (1. 2) 1 *Inſt.* (11th Edit.) 125. a. 400. b.

Reſpect preferable to the other, which is of leſs Force and Efficacy: In the Examination hereof, I proceed thus.

&c. within the Record, within which the Matter of Fact iſſuable is alleged.—This was formerly a Learning of the Greateſt Niçety and Uſe, but is now of very little import, ſince, by the Statute of the late *Queen* [3], *Venires* out of the Courts at *Weſtminſter* ſhall be had *de Corpore Comitatus*, except in Proſecutions Criminal, and on Penal Statutes. *Hawkins'* Abr. *Co. Lit.* p. 185.

[3] 4th & 5th *Annæ*, c. 16. § 6. 7.

CHAP. XXI.

The Inconveniencies of Trials by Witneſſes only.

BY the Courſe of the *Civil Law*, the Party, who, upon the Trial, holds the Affirmative Side of the Queſtion, is to produce his, a (8), *Witneſſes*, whom he is at Liberty to name at his Pleaſure. On the other Hand, a Negative is incapable of being proved; I mean directly, tho', indirectly it is otherwiſe. Now, He may well be thought a Perſon of an Inconſiderable Intereſt, and of leſs Application, who, from the Groſs of Mankind and all his Acquaint-

C c ance,

a (8) *Teſtes*,] But ſome Trials by our Law have alſo Witneſſes without a Jury: As of the Life and Death of the Husband in *Dower*, and in *Cui in Vita*. Examples thereof are in *Bracton*, *lib.* 4. *tract.* 6. *cap.* 7. 2 *Ed.* 2. *tit.* Tryal 46. 8 *Ed.* 2. *eod. tit.* 95. 9 *Ed.* 2. *tit.* Judgment 231. 2 *Eliz. Dyer*, *fol.* 185. *a.* and in 13 *Eliz. Dy. fol.* 301. *a.* In Error by an Infant to reverſe a Fine, both Inſpection and the Teſtimony of Four Witneſſes concur to prove his Infancy, and in 26 *Ed.* 3. *fol.* 70. *a. pl.* 6. a Death in *Bretagne*, is ſaid, ſhall be tried by Proofs. But all this is of Iſſues, which properly have no Viſne, whence a Jury may be. The Courſe of Declarations alſo at this Day ſhew, that Witneſſes were reſpected in the Beginning of every Action. The Concluſion is always *Et inde producit Sectam*. Which *Secta* or *Suit*, in Law Language, is nothing but Witneſſes to prove his Action, as in the Counts of *Writs of Right* they were wont to declare, *& hoc paratus ſum probare per hunc liberum hominem meum* A. B. *& ſi quid, &c.* Which was a Tender of Battel as the other is of Suit or Witneſſes. See *Glanvil*, *lib.* 2. *cap.* 3. And thoſe Proofs of the Death of the Husband in Dower are called *Secta* by *Bracton*, *fol.* 302. *a.* and in *Nov. Narrat.* Suit & * Darraign bon, is only *Secta & * diſrationatio bona*, i. Good Proof to maintain the Count. In Ancient Time this Suit, or Witneſſes, were examined before any other Iſſue, as in 18 *Hen.* 3. *Coram Rege apud Windſore*, *rot.* 13. *in dorſ. in Turr. London.* In a *Recordare Loquelam* that was in the Biſhop of *Salisbury*'s Court at *Sunnings*, the Action being for a Mare, by *Walkelin de Stok* againſt *William de la Guilhalle*, the Entry is; Et *Willielmus producit* ſectam *ſuam, & ipſi quos produxit per ſe diſcordantes ſunt in multis, & in tempore, & in alijs Circumſtantijs, quia quidam dicunt quod quædam Equa mater ipſius pullani empta fuit, &c. Et quidam dicunt*, &c. *Et Walkelinus producit* Sectam *qui concordati ſunt in omnibus & per omnia, & dicunt omnes quos ipſe producit per ſe, &c.* The Proofs of both Sides are called *Secta*. It was either this or ſome like Caſe, that *Shard* entended in 17 *Ed.* 3. *fol.* 49. *b.* In *John Warrein*'s Caſe, ſpeaking of a Juſtice that examin'd the Suit. And it appears there, that under *Ed.* 3. the Tendering of Suit or Proofs was become only formal, as at this Day like the *Plegij de Proſequendo*. But in *Hill.* 44 *Hen.* 3. *Coram Rogero de Thurkelby & Socijs ſuis Juſticiarijs de Banco*, *Rot.* 16. *in dorſo*, One *Gilbert Chyteine* brought a *Replevin* againſt *William le Fouler*, and the Defendant pleads *non cepit, &c. Et hoc offert defendere contra ipſum &* Sectam *ſuam ſicut Curia conſideraverit. Et quia prædictus Gilbertus nullam* ſectam *producit verſus prædictum Willielmum, conſideratum eſt quod prædictus Willielmus eat inde ſine die & Gilbertus in Miſericordia.* See *ad Cap.* 32. I omit, that in *Engleſherie* anciently in a *Nativo habendo*, in proving a *Deed denied*, and ſuch like, Witneſſes by the Common Law are required as the Special Trial. *Seld.*

The *Lawyers* ſay, "In his quæ pertinent ad Litis Ordinationem, favemus *Actori* potiùs, quam "*Reo*." The *Civil Laws* require of the *Actor* his Oath, that he has not begun his Suit injuriouſly, but, upon a Good Cauſe: The *Defendant* likewiſe ſwears, that he ſhall make a Juſt Defence: The ſame Law requires that Teſtimony be given by ſuch Perſons as he ſhall produce, and they ſhall not be excepted againſt. The Opinion is, "Duobus aſſerentibus *affirmativam* magis creditur, quam "etiam Decem *Negativam* Proponentibus [1]. . . . Incumbit probatio ei qui *dicit*, non qui *Negat*. A *Negative* of Fact is hardeſt to prove. "*Negativa coarctata, loco & tempore poteſt probari.*—A. accuſes B. to have been at *York*, there to have committed ſuch a Fact, in Proof of which he produces ſeveral Witneſſes: B. cannot prove that he was not at *York*, againſt a Poſitive Teſtimony that he was, but he may prove the Negative, by collateral Teſtimony, that at that very ſame Time he was at *Exeter*, in ſuch a Houſe and in ſuch Company. W.

* V. Chap. LIII. N. g.

[1] *Digeſt*, L. 4. T. 8. Gloſſ. K. Conſenſerunt. p. 644.

ance cannot find out (b) Two, ſo devoid of Conſcience and all Faith, who, thro' Fear, Inclination, Affection, or for a Bribe, will not be ready to gainſay the Truth. So that the Party, to make Good his Cauſe, is at his Liberty to produce two of ſuch a Stamp; and, if the other Party had ever ſo much Mind to (c) object againſt them, or their Evidence, It will not always happen that they are or can be known by the Party, *Defendant* in the Cauſe, in order to call in Queſtion their Life and Converſation, that, as Perſons of a Profligate Character, they might be croſs-examined; upon which Account their Evidence might be ſet aſide: And, ſeeing their Evidence is in the *Affirmative*, it is not ſo capable of being overthrown by Circumſtances, or any other Indirect Proofs. Who then can live ſecurely with Reſpect to his Life, or Eſtate, under ſuch a Law which is ſo much in Favour of any *one*, *who* has a Mind to do Miſchief? And, what two wicked Wretches have uſually ſo little Caution, as not to Form to themſelves before-hand a Perfect Story of the Fact, about which they know they are to be examined, with every Minute Circumſtance attending it, as if they had been true and real? "For, the Children of this World (as "*our Saviour* ſays) are in their Generation wiſer than the Chil-"dren of Light." So, (d) wicked *Jezabel* produced in Judgment Two Witneſſes, (e) Sons of *Belial*, to impeach *Naboth*, whereby he

4 loſt

(b) "In *Teſtimonijs* Dignitas, Fides, mores, Gravitas examinanda eſt; Ideo *Teſtes* qui adverſus "Fidem ſuæ Teſtationis vacillant audiendi non ſunt. [2] * Si careat Suſpicione *Teſtimonium*, vel "propter perſonam à qua fertur, quod Honeſta ſit; vel propter Cauſam, quod neq; Lucri, neq; gratiæ, "neq; Inimicitiæ cauſa ſit, admittendum eſt." [3] † This Clears the *Civil Law* from admitting *Teſtimonies*, quà *ſuch*, without Conſideration had of the Perſons, the Circumſtances, and the Depoſers of them. The Judges of that Law are required to ſee to *Witneſſes*, that their *Teſtimonies* may be clear and pregnant. "Nota, quod poteſtate Judicis conceditur utrum debeat adhiberi Fides *Teſti* "vel non.— Judex poteſt refrænare numerum *Teſtium*" [4]. Tho' the Judge cannot *arbitrari in determinatis à Lege*, Yet can he, by the Law, Judge of *Teſtimonies*.— "*An Fides ei ſit adhibenda*, "*Judicis mandatur Officio*." The Chancellor, when he impeaches the *Civil Law* in this Manner, can mean nothing, but thereby the more to commend the **Common Law** of *England*, which, to the Proof by Witneſſes, ſuperadds the Trial by a Jury of XII. Men. Subornation is eaſier effected with Two *Witneſſes*, than with *them* and a **Jury** too, which are, for the moſt part, and ought to be, Men of Fortune and Integrity, and, in Conſequence, there is a Probability of leſs Errors and Miſtakes in Juſtice with us here in *England*, than in any other Part of the World: Our Judges are Learned, and inform the **Jury** in the right Method of digeſting the Evidence before them. So that a better Trial no Man can deſire, than by a **Jury** of XII Men. W.

(c) *Contra eos dicere*, by Way of Exception to their Perſons, *Contra eorum dicta*; by Impeaching of their Evidence. The Judge in the *Civil Law*-Proceedings, may defer paſſing Sentence, till the Party oppreſſed by Falſe Witneſſes find ſome Expedient to invalidate their Teſtimony; or, the Judge ſeeing the Perverſeneſs of the Proſecutor, may perſwade them to agree, which, probably may effect Raparation to the Injured: Tho' it be not ſuch a Curb as that in Trial by **Juries** is. We muſt underſtand our Author here with Grains of Allowance. His Senſe muſt be, that, in the *Civil Law*-Proceedings, a greater Latitude is left to ſiniſter Courſes, than can be in *England* by the Courſe of Proceedings at **Common Law**, with no other Intent, in the General, than to make the **Common Law** appear, as it really is, more applicable to General Security. W. Mr. *Waterhouſe*, under this Note, quotes *Julianus*. *Digeſt*, L. 7. Tit. 1. p. 889. in Textu. C.——— *Digeſt*, L. 1. Tit. 16. B. in Text.

(d) *Jezabel Sceleratiſſima*, That curſed Woman [5], the Daughter of *Ethbaal*, King of the *Sidonians* [6], a Worſhipper of *Baal*, who brought the Worſhip of *Baal* into *Iſrael*, and ſtirr'd up her Husband to proſecute the *Prophets*, whom, by his Authority, ſhe is ſaid to cut off [7]. *Ahab* ſold himſelf to do Wickedneſs, whom *Jezabel* his Wife ſtirred up. 1 *Kings* XXI, 20 & 25.

(e) Two Men, Sons of *Belial*:] The Law required that there ſhould be two Witneſſes at leaſt to Condemn a Man, otherwiſe there would have been no Pretence for putting *Naboth* to Death [8]. Sons of *Belial*, Men of no Conſcience, who would ſwear any Thing for Money, Men of a moſt deſperate Condition, the Worſt of Men, who care not what they do. Mr. *Lock* [9] ſays, that *Belial* is a General Name for all the falſe Gods worſhipped by the Idolatrous Gentiles.

---

[2] *Modeſtinus*, L. 8. Regularum. * 1 *Danv.* Abr. 596. (D) (b) [3] *Caliſtratus*.
† Wiſeman 28, 9. [4] *Bartolus*. [5] 2 *Kings* IX. 34. [6] 1 *Kings* XVI. 31.
[7] *Peter Martyr* on 1 *Kings* c. XXI. [8] *Deut* XIX. 15. [9] On 2 *Cor*. VI. 15.

loſt his Life, and *Ahab* (f) took Poſſeſſion of his Vineyard. (1 *Kings* XXI, 11, 17.) Again, by the Teſtimony of *Two Elders*, who were Judges, *Suſanna* the virtuous Wife of *Joacim*, had been put to Death as an Adultereſs, had not GOD himſelf miraculouſly interpoſed to reſcue her by a Method ſo ſudden and inconceivable, as carried the Plain Marks of inſpired Wiſdom, and ſuch, as was far above the natural Attainments of a (g) *Youth*, not yet arrived to Maturity of Years, or Judgment. For, tho' by varying in their Evidence, He plainly convicted them to be Falſe Witneſſes; yet, who but GOD alone, could have foreſeen, that they would thus have varied in their Evidence? Since there was no Law which obliged them to be ſo exact in every little Circumſtance, as to remember under what Kind of Tree the Fact alledged was committed. For, the Witneſſes of any Criminal Action are not ſuppoſed to take Notice of every Buſh, or other Circumſtance of Place, which ſeem'd to import nothing, either as to the detecting or aggravating of the Crime. But, when thoſe wicked Judges, in ſuch their wilful Depoſition, varied concerning the Species of the Trees, their own Words demonſtrated that they had prevaricated and deviated from the Truth, whereby they deſervedly incurred the Sentence of the (h) Law of *Moſes*, according to which, they did unto them in ſuch

(f) Took Poſſeſſion; *Vineam poſſidebat.*] "Titulo Confirmationis, quæ apud *Hebræos* locum "habebat in omnibus Delictis adverſus Regiam Majeſtatem." *Grot.* W. J. *Diodati* upon the Place, ſays, that this could not be by any Way of Forfeiture, which was not uſed amongſt GOD's People, but, by a Tyrannical Uſurpation. Tho' *Naboth*'s Children were, or had been dead, yet *Ahab* had no Right unto it, as unto a void Inheritance; for, it was to go to the next of Kin.—— *Naboth* being ſo cruelly dealt withal, We may well think that none of his Kindred durſt challenge their Right to hinder the King's Poſſeſſion. If a Man had only Blaſphemed GOD, he was to be tried at the Great Court, at *Jeruſalem*, (as the *Hebrew* Doctors tell us) and his Goods came to his Heirs: But when any Man was executed for Treaſon againſt the King, his Eſtate went to the Exchequer, being forfeited to *him*, againſt *whom* the Offence was committed: And therefore his Accuſation was, that he Blaſphemed *GOD and the King*. 1 *Kings* XXI. 10, and 13th, *Patrick* ad Loc. —v. *Seld.* de Succeſſionibus c. 24. Fol. Edit. 87,8.—Opp. II. 66.

(g) *Daniel*,] "Quam à Naturâ non habuit Puer Junior— The Lord raiſed up the Holy Spirit of a *Youth*, whoſe Name was *Daniel* [10].— From that Day forth was *Daniel* had in great Reputation in the Sight of the People [11]. In him was the Spirit of the Holy GODS [12].— Light and Underſtanding and Wiſdom, like the Wiſdom of the GODS, was found in him [13].— *Daniel* was grown to ſo great a Perfection, ſuch was the Fame of his Wiſdom, that it became ſpoken of by Way of Proverb thro' all the Eaſt. V. the *Connection* 8°. I. 75. 80. *Ezek.* XIV, 14, 20.— Ib. XXVIII. 3. *Lowth.* ad Loc.

(h) According to the Law of *Moſes*, they did unto them in ſuch Sort as they maliciouſly intended to do to their Neighbour: And they put them to Death [14]. This Law of *Moſes* is laid down in *Deut.* and other Places of Scripture.—"Then ſhall ye do unto him as he had thought to have done "unto his Brother [15]." *Grotius* [16] obſerves, that the Party injured might forbear to require this Puniſhment; But the Judge, if it were required, could not deny to inflict it. Where it is ſaid [17], *Eye for Eye*, &c. The *Hebrews* underſtand it to ſignify *Pecuniary Mulcts*. There ſeems to be a great deal of Reaſon in many Caſes to admit of a Compenſation. As, in that mentioned by *Diodorus Siculus* [18], where the one eyed Man complained of this Law (which was among the *Heathens*) as too rigid; For, if he loſt the other Eye, he ſhould ſuffer more than the Man whom he injured, who had ſtill one Eye left. Upon ſuch Conſiderations, *Phavorinus* argues againſt this Law (which was one of the XII. *Tables* [19]) as not poſſible to be juſtly executed according to the very Letter of it; therefore the Law of the *Twelve Tables* was with this Exception, *Ni cùm eo pacit*, ſo *Sextus Cæcilius* expounds it in *A. Gellius* [20]. At *Athens*, he who ſtruck another was by the Laws condemned in a *Pecuniary Mulct*, to the Uſe of the Party injured, when he preferred his Complaint; or, for the Uſe of the Public, if a Third Perſon proſecuted as the Accuſer. For, amongſt the *Athenians*, it was permitted to any particular Perſon to proſecute for an Injury offer'd another [21]. *Talio Pythagorica*

[10] Hiſt. *Suſanna*, v. 45. [11] Ib. v. the Laſt. [12] *Dan.* V. 11. [13] Ib. IV. 8. 9. 18. [14] Hiſt. *Suſanna*, v. 62. [15] *Deut.* XIX. 16. *Exod.* XXI. 23—25. *Levit.* XXIV. 19. 20. [16] On *Matth.* V. 38. 40. v. *Whitby* ad Loc. & *Pat. Deut.* p. 317. [17] *Exod.* XXI. 24, 25. [18] L. 12. [19] *Tab.* VII. L. IV. [20] L. 20. c. 1. p. 1093. L. 3. c. 10. 891. [21] *Catrou & Rouille* in Nott. ad Hiſt. Ro.

ſuch Sort as they maliciouſly intended to do to their Neighbour: And they put them to Death. (*Hiſt. Suſanna* 62.)

You have, moſt Gracious Prince! within your own Memory, a remarkable Inſtance, how much Juſtice may be perverted, in the Caſe of *Mr. John Fringe:* Who, after he had been in Prieſts Orders for three Years, was, by his own Procurement, and the Depoſition of Two Falſe Witneſſes, (who ſwore that he had been formerly contracted to a certain Young Girl) compelled to quit his Orders and to marry her: After Cohabiting with her fourteen Years and having had by Her ſeven Children, being at laſt convicted of High Treaſon againſt Your Highneſs, in the very Article of Death, and in the Hearing of a Multitude of People, He declared that thoſe Witneſſes had been ſuborned by him, and that what they depoſed was utterly Falſe and Groundleſs. Many like Inſtances You may have heard of, where Juſtice has been perverted by Means of Falſe Witneſſes; even under Judges of the greateſt Integrity, as is notorious to thoſe, who converſe with and know Mankind. This Sort of Wickedneſs, Alas! is but too frequently committed.

gorica, which was according to the Letter of the Law, was not always exacted; ſometimes *Talio Similitudinis*, ſome proportionable *Mulct* by Way of Satisfaction to the Party was paid. "Reus "habuit Facultatem paciſcendi, & non neceſſe habuit pati *Talionem*, niſi eam elegiſſet [22]." *Joſephus* is expreſs that the Law allow'd him who was hurt to eſtimate his own Damages, and that if he would not accept a *Pecuniary* Satisfaction, he was deemed Severe and Cruel [23].— "*Talio*- "*nis* Pœna, ſeu reciproca pœna, Vicarium pœnæ Genus [24]. *Talio* Jus eſt maximè probatum à "*Pythagoricis*, ſic dicere ſolitis,

Jus rectum fuerit, factis ſi perferat æqua.

"*Hebræi* quoq; ſunt uſi jure *Talionis*, Deo Autore; *Ariſtoteles* vero tale Jus elevat in Delictis, in "Commercijs admittit per Analogiam, hoc eſt, per Similitudinem, ſeu proportionem, non per æ- "qualitatem [25]." The *Hebrew* Doctors ſay, that (*excepting Life for Life*) every Thing may be redeemed for Money; this they gather from *Numbers* XXXV, 31. "Ye ſhall take no Satisfaction "for the Life of a Murtherer," ſo that, maims or hurts are not forbidden to be ſatisfied for; and, it is ſaid, in Reſpect of Satisfaction, *Thine Eye ſhall not pity* [26]. The Barbarous Attempt upon *Sir John Coventry*, occaſioned the Bill called, *Coventry*'s Act, "Which made it Death for any Man "maliciouſly to diſable or diſmember another, to put out an Eye, to ſlit or cut off a Noſe or "Lip [27]."

Of this Kind was Weregild an Ancient *Saxon* Law, whereby the Price or Value of a Man ſlain, was paid, partly to the King, for the Loſs of his Subject, partly to the Lord whoſe Vaſſal he was, and partly to the next of Kin [28]. —— *Wera* ſignifies Amerciament, or Compenſation; *pretium Vitæ Hominis appretiatum* [29]. — By the Ancient Law of *England*, if the *Defendant* in an *Appeal* of *Mayhem* had been found Guilty, the Judgment againſt the *Defendant* had been, that he ſhould loſe the like Member that the Plaintiff loſt by his Means [30]. It appears by this Law, that ſuch Government was in Ancient Times, as Slaughters of Men were moſt rarely committed, as *Lambard* collecteth [31].

. . . *Weregilda*, ut *Wera*, æſtimatio Capitis occiſi propinquis ſolvenda, de qua vid. L.L. *Ethelſtani* & *Edmundi*, ex Editione Wheloci pp. 55, 6. 58, 9. nec non Gloſſar. *Somneri. Hickes*, d. e. 116. b. (Wilk. 54. 72. & Gl. ib. *Fort.* 82). 3 *Inſt.* 116. v. *Spelm.* & *Du Freſne* ad v.v. *Wera* & *Weregeldum*. *Wilkins*, paſſim. *Seld.* I. 806. III. 517. 639. 1023. Bibl. *Cott. Claudius.* D. II. 9. de varijs *Weregildi* Speciebus.

[22] A. *Gell.* 1099. [23] *Antiqq.* L. 4. c. 8.— *Lodge*, p. 96. *D'Andilly*, Eng. 117. A. [24] *Du Freſne* ad v. who quotes *Britton*, Fo. 16. b. c. 9. [25] *Calvin* ad v. ubi plura. *Pitiſc.* [26] *Deut.* XIX. 21. [27] 22, 3. C. II. c. 1. v. *Seld.* I. 805, 6. *Camerarius*, L. 5. c. 19. *Grotius* de jure, L. II. C. XX. § 6. *Puff.* L. 8. c. 3. § XXVII. *Wilkins* 237. [28] V. *Skene.* v. *Vergelt. Cowell.* v. *Weregild.* vid. Wer-gyld-deof in *Somner.* Dict. *Fleta*, L. 1. c. 47. [29] 1 *Inſt.* 127. a. [30] Ib. [31] Ib. 287. b.

CHAP. XXII.

Concerning Torture.

FOR this reaſon, the Laws of *France*, in Capital Caſes, do not think it enough to convict the (a) Accuſed by Evidence, leaſt the Innocent ſhould thereby be condemned; but they chuſe rather to put the accuſed themſelves to *the Rack*, till they confeſs their Guilt, than rely entirely on the Depoſition of Witneſſes, who, very often, from unreaſonable Prejudice and Paſſion; ſometime, at the Inſtigation of wicked Men, are ſuborned, and ſo become Guilty of Perjury. By which over-cautious, and inhuman Stretch of Policy, the ſuſpected, as well as the *really* Guilty, are, in that Kingdom, tortured (b) ſo many Ways, as is too tedious and bad for

(a) *Reus*] The *Defendant*, quia *illius res* agitur [1]. "*Reos* appello non eos modo qui arguuntur, "ſed omnes *quorum de re* diſceptatur [2]. *Reus* eſt qui cum altero litem conteſtatam habet, ſive is "egit, ſive cum eo actum eſt." * *Gallus Ælius*, cited by *Feſtus*. "*Reus*] definitur ex Ety- "mologia nominis, ut is ſit *cujus de re*, id eſt, cauſa diſceptatur: Conſuetudo tamen obtinet, ut "*reus* tantum vocetur is, qui arguitur, non qui arguit [3]. The Gloſs on *Ulpian*, L. 3. ad L. *Julian. & Pap.* makes *Reus*, Accuſatus. V. Calvin ad v.

(b) Tho' We have many different Puniſhments for *Felonies*, of which conſult the Quotations in the Margin [4]; Yet, We have no ſuch Tortures for Malefactors, as are practiſed in *France*. Our Laws had Purgations by *Ordeal*, by *Battle*, by *Water:* But, becauſe they were Cruel, and Uncertain as to the Event, the Law has obſoleted them now [5]. There is no Law to warrant Tortures in *England*, nor can they be juſtified by any Preſcription [6]. There is not to be found any One Opinion in Our Books, or Judicial Records, in Maintenance of ſuch Law or Uſage [7]. By the **Common Law** the Gaoler could not lay Irons on his Priſoner for his Safe-keeping, as appears by all Our Ancient Authors [8]. "It is the Miſery, one may ſay, the Slavery, under "which other Nations groan, that the Puniſhment for Crimes is Arbitrary and Variable, and "that He who commits the ſmalleſt Offence may be put to undergo the moſt rigorous Puniſh- "ment. But, it is not ſo with this Nation; Crimes here are ſtated, and ſo are their Puniſh- "ments. This is one of the main Channels thro' which Our Anceſtors have delivered down to "us that Liberty, which is the Glory of this, and the Envy of all other Nations." The King can't, by any Warrant under the Great Seal, alter the Execution of the Law, otherwiſe than the Judgment of Law doth direct: For, it is a Maxim in Law, "Non alio modo puniatur quis "quàm ſecundum quod ſe habeat Condemnatio [9]." Before the Reign of *Hen.* I. the Judgment for *Felony* was not always one. But King *Hen.* I. ordained by Parliament, that the Judgment for all manner of Felonies ſhou'd be, That the Perſon attainted ſhou'd be hanged by the Neck, till he be dead, which continueth to this Day [10]. The Duke of *Clarence* being condemned, all the Favour he could get of the King his Brother, was, to chuſe what Death He wou'd die. To avoid appearing on a Scaffold, He deſired to be ſuffocated in a But of *Malmſey* Wine [11]. This Article of a Criminal's chuſing his Death, I think, is not known in Law, therefore, in the preſent Caſe it was Murder. It is a Common Prejudice among Foreigners, who either live in, or come hither from Countries where Juſticè is adminiſter'd with extreme Rigour and Severity, that the *Laws of England*, are in many Caſes, too Mild and too remiſsly executed, whereby it happens, that Criminals often eſcape Puniſhment. But, in Vindication of Our Laws, We need only obſerve, firſt, that they are excellently well framed and adapted to the Humanity and Good Nature of Our Nation, and agreeable to Our *Free Government*. Secondly, that tho' Our Laws be mildly put in Execution, yet nevertheleſs Criminals ſeldom go unpuniſhed.

Burnet Ref. II. 350.

Raro Antecedentem Sceleſtum
Deſeruit pede Pœna claudo. *Hor.* Carm. III. 2.

[1] *Wood*'s Inſt. Imp. Law 299. *Cic.* de Oratore L. 2. 79. [2] Ib. L. 2, 43. *Delph. Edit.* p. 156. §. 183. * *Fabric.* Bibl. Lat. I. 815. III. 791. [3] *Cic.* Edit. *Ald. Manuc.* To. 2. p. 91. a. 93. [4] *Seld.* III. 1926, 7.— ad *Hengham. Du Freſne* ad v. *Infaliſtatio.* [5] W. *Wood*'s Inſt. I. L. 352. [6] N. *Bacon*, Pt. 1. c. XXXVII. [7] 3 *Inſt.* 35. [8] 2 *Inſt.* 381. *Wood*'s Inſt. C. L. B. 4. c. 5. p. 614. *Kennett*, I. 55, 6. [9] 3 *Inſt.* 52. *Bract.* L. 3. fo. 104. b. [10] 3 *Inſt.* 53. Scriptt. poſt *Bed.* 471. *Wilk.* 304. b. [11] *Rapin*, VI. p. 132. *Hawk.* P. C. II. cap. 48.

for Deſcription. Some are extended on the (c) *Rack*, till their very Sinews crack, and the Veins guſh out in Streams of Blood: Others have Weights hung to their Feet, till their Limbs are almoſt torn aſunder, and the whole Body Diſlocated: Some have their Mouths (d) *gagged* to ſuch a Wideneſs, for a long time, where-

The Poet deſcribes *Rhadamanthus* in the following Manner:

Gnoſſius hæc Rhadamanthus . . . . . Virg. Æn. VI. 566.
Theſe are the Realms of Unrelenting Fate,
And Awful *Rhadamanthus* Rules the State;
He hears and judges each committed Crime,
Enquires into the Manner, Place and Time.
The Conſcious Wretch muſt all his Acts reveal,
Loath to confeſs, unable to conceal,
From the firſt Moment of his Vital Breath
To his laſt Hour of unrepenting Death;
Straight o'er the Guilty Ghoſt, the Fury ſhakes
The Sounding Whip, and brandiſhes her Snakes,
And the Pale Sinner, with her Sifters, takes.
Mr. Dryden.

The *Civil Laws* are Arbitrary, Cruel and Defective, as that cited by *A. Gellius* of the Law of the XII. *Tables*, whereby the Debtor, in Caſe of Inſolvency, was to be cut up in Pieces and divided amongſt his Creditors. A. *Gell.* L. 20. c. 1. — Tab. III. L. VI. v. Lord *Macc.* Tryal 119. b.

(c) This is One of the Tortures *France* has, The Extenſion of the Body upon a Wooden Horſe, on which the Hands and Feet are ſo faſtened, and the Body Streſſed with Weights, that *eorum rumpuntur Nervi*. . . . This was a Heathen *Roman* Puniſhment, *Tully* [12] mentions it. "Equuleus] "Tormenti Genus eſt, quo Homines cruciabiliter torquentur: ita dictus, quod ad equi formam "concinnatus eſſet. — Machina fuit Lignea, torquendis Hominibus comparata, de qua crebra fit "mentio apud eruditos, tam *Ethnicos*, quam *Chriſtianos*. Eum multis deſcripſit, & *Car. Sigonii*, "aliorumque doctorum errores hac in re notavit *Ant. Gallonius* de Martyr. cruciat' [13]." Facti in *Equuleo* quæſtio eſt, Juris in Judicio [14]. "Neminem certè adhuc ſcio eo nomine. — Votum "ſolviſſe, quod Flagellis cæſus eſſet aut Podagra Diſtortus, aut *Equuleo* Longior factus. Carnifex "præſto eſt, Vagula effodiens, *Equuleus* extendens, Ignis exurens; ad Hominis corpus unum "Supplicia plura quam Membra [15]." Upon Occaſion of the Puniſhment of *Metius Suffetius*, the Hiſtorian ſays, [16] "Illud veluti immite præterque Legum Humanitatem in Exemplum deductum "non eſt." To the ſame Purpoſe *Livy* [17]. The Company all turned away their Eyes from ſuch a Cruel Sight. That was the firſt and laſt Puniſhment among the *Romans* that was an Inſtance of Inhumanity. For, in all others They may very well boaſt, that no Nation was ever ſatisfied with eaſier Penalties.

Vinctum retortis Brachiis
Surſum ac deorſum extendite,
Compago donec Oſſium
Divulſa Membratim crepet. —— Prudent. περὶ στεφ. v. 109.

. . . . . *juſſerat*
Eviſcerandum corpus eculeo *eminus*
Pendere, & uncis Vinculiſq; creſcere. —— ib. X. 108.

Miſerum putetis quod retortis pendeo
Extentus ulnis, quod revelluntur pedes,
Compago Nervis quod ſonat crepantibus. ib. 491.

V. *Godw.* Ro. Antiqq. L. 3. §. 3. c. 7. *Roſinus* 1501. B. *Pitiſc.* ad v. *Am. Marcellin.* Ed. *Gron.* p. 515. v. *Tillotſon*, Fo. III. 639, 40. *Polit. State*, Feb. 1731. p. 116. *

(d) This is a Torture by applying to the Mouth the *Gagg*, called Ἐπισθήμιον [18], ſo faſt claſped to the extended Orifice of the Mouth, that it not only moſt hideouſly pains it to be kept at the Height of Extenſion, but alſo impedes the Speech, "Majores noſtri in Dominum de ſervo quæri "noluerunt, non quia non poſſet verum inveniri, ſed quia videbatur indignum & Dominis morte "ipſa triſtius. In reum de ſervis accuſatoris cum quæritur verum inveniri poteſt [19]. Cum "more Majorum de ſervo in Dominum ne tormentis quidem quæri liceat: in qua quæſtione dolor "veram vocem elicere poſſit, etiam ab invito exortus eſt Servus, qui, quem in *eculeo* appellare

[12] *Tuſc.* Diſp. L. 5. V. Edit. *Davis — Verburg.* To. 4. 1023. [13] Cap. III. p. 94. & ſeqq. [14] *Cic.* Orat. pro *Milone, Delph.* p. 330. — *Verb.* To. 2. 1001. XXI. v. *Sozomen*, Eccl. Hiſt. Lib. 5. [15] *Cic.* To. 8. Ed. *Manucc.* 244. [16] *Alex. ab Alexandro.* L. 3. c. 5. [17] I. c. XXVIII. A. *Gell.* 1107. *Dionyſ. Hal.* L. 3. p. 171. *Pitiſc.* v. Quadriga. *Plut.* Mor. V. p. 499. *Eachard*, Ro. Hiſt. I. 28, 9. * V. Hieron. Magius de Equuleo, & Fabric. Bibl. Antiq. p. 514. [18] *Budæus* in *Pandect.* 687. Ed. *Baſil.* 3. 1534. W. *Scap.* Lex. ad v. *Skinner* ad v. **Gagg**, *Du Freſne*, v.v. *Gaggare, Tortura.* [19] *Cic.* pro *Milone.* V. Tom. 2. 1002. XXII.

whereat ſuch Quantities of Water are poured in, that their Bellies ſwell to a Prodigious Degree, and then being pierced with a Faucet, Spigot or other Inſtrument for the Purpoſe, the Water ſpouts out in great Abundance, like a Whale (if one may uſe the Compariſon) which, together with his Prey, having taken in vaſt Quantities of Sea-Water returns it up again in Spouts, to a very great Height. To deſcribe the Inhumanity of ſuch Exquiſite Tortures affects me with too real a Concern, and the Varieties of them are not to be recounted in a Large Volume. The *Civil Laws* themſelves, where there is a want of Evidence in *Criminal* Caſes, have recourſe to the like Methods of (e) Torture for ſifting out the Truth.

" non poſſet, eum accuſet ſolutus. *Cic.* [20] — Torment on *the Queſtion*, which is uſed by the " Order of the *Civil Law* and Cuſtom of other Countries, to put a Malefactor to exceſſive pain, " to make him confeſs of Himſelf or his Accomplices, is not uſed in *England* [21]." No Perſon accuſed of any Capital Offence in *Scotland*, ſhall ſuffer or be liable to any Torture, Provided that this Act ſhall not extend to take away that Judgment which is given in *England* againſt *Felons* who refuſe to plead [22]. A Puniſhment much of the ſame kind was put in Practice by the *Dutch* at *Amboyna* [23], and afterwards by *Lewis* XIV. on the Revocation of the Edict of *Nants*, v. Hiſt. *Lewis* XIV. 336, 7. *Benoit*'s Hiſt. Edict. of *Nants*, I. 15. V. Reid, &c. Abr. Ph. Tranſ. VI. pt. 4. p. 10.

(e) When * *Poiſoning* was frequent with Us, the Statutes adjudged Wilful poiſoning High Treaſon, and the Offender to be boiled to Death. In Conſequence of this Law, *Rouſe* [24], a Cook, who poiſoned ſome Soupe in the Biſhop of *Rocheſter*'s Kitchen, with which ſeveral were mortally infected, and ſome died, was puniſhed. And the 17th of *March* 1542. [25] one *Margaret Davie* was boiled in *Smithfield* for poiſoning three Houſholds that ſhe had dwelt in. But, the Nation judging it too ſevere, it was afterwards repealed [26]. Formerly, grievous Offenders were hanged in Chains alive, where, dying, they uttered diſmal Moans, ſo much to the Terror of Paſſers by, that Uſe reduced it to hanging in Chains, when Dead. So, in the Iſlands of *Scilly*, there was a Puniſhment of *Felony*, very Tragical. *Felons* were let down in a Basket from a Steep Rock, with the Proviſion only of Two Loaves of Barley Bread, and a Pot of Water, to expect, as they hang, the Mercy of the Seas. W. Confeſſion from ſuſpected Criminals in *Scotland* is extorted by an Inſtrument, called the *Boot*, made of four Pieces of narrow Boards nailed together, or, according to Biſhop *Burnet*, a Pair of *Iron Boots* cloſe on the Leg, of a Competent Length, in which They put the Leg of the Party, and drive Wedges tight between theſe and the Leg, as Occaſion requires, according to the Notoriety of the ſuppoſed Crime. The Common Torture was only to drive the Wedges in the Calf of the Leg. But, I have been told, they were ſometimes driven in the Shin Bone. Something alſo they have like it for the Thumbs, which they call, the *Thumbkins*, for leſs ſuſpected Offences [27]. In the Caſe of Mr. *Carſtairs*, he was put to the Torture, having both his Thumbs at once bruiſed betwixt two Irons, by a New Model of that Engine of Torture, which was called *Thummikins*, which, tho' it did not go ſo far, as to drive the Marrow out of the Bones, yet was next Door to it. This Torture made both his Arms ſwell greatly, and made him Feveriſh [28]. The Torture of the *Boot* is inflicted in the Preſence of the Council: And, upon that Occaſion, almoſt all offer to run away. The Sight is ſo Dreadful, that, without an Order reſtraining ſuch a Number to ſtay, the Board wou'd be forſaken. The Rule is, that upon One Witneſs and Preſumptions, both together, the *Queſtion* may be given: But, it is never known to be twice given: Or, that any other Species of Torture, beſides the *Boot*, may be uſed at Pleaſure. In the *Court of Inquiſition*, they do, upon Suſpicion, or, if a Man refuſes to anſwer upon Oath, as he is required, give him the Torture, and repeat it, or, vary it as often as they think fit; and do not give over, till they have got out of their Mangled Priſoners all that they have a mind to know from them [29]. *William* the *Conqueror* was ſo ſevere and ſtrict for Preſervation of Deer, that, " Cervum vel Capreolum capienti oculi " eruebantur [30]." He likewiſe puniſhed Rape by Gelding of the Offender. " In the Octaves " of the Epiphany, *William* II. and all his Nobles were at *Salisbury*; There *Goſfrey Bainard* " accuſed *William de Ou*, the King's Kinſman, of Treaſon (in the King's Court) and vanquiſhed " him in Single Combat; whereupon the King commanded *William de Ou*'s Eyes to be put out, " and his Teſticles to be cut off [31]." King *Hen.* I. ordered, that Counterfeiters of Money ſhould have

[20] Pro R. *Deiotaro*, ib. 1046. [21] *Smith* Repub. L. 2. c. 24. [22] Stat. 7 *Annæ*, c. 21. V. [23] *Kennett*, II. 788. *Eachard*, I. 973. * V. Coll. Lord *Bacon*'s Life, p. 83. — Baconiana p. 3, 14. [24] *Burnett*, Hiſt. Ref. I. 113. App. 286. *Rapin*, VII. 434. [25] *Old Eng. Chron.* 12° 289. [26] 1 *Ed.* VI. 12. §. 13. — 1 *Mar.* Seſſ. 1. c. 1. [27] *Burnett*, Hiſt. ſui Temp. 237. *Chamb.* Preſent State 449. [28] *Burnett.* [29] Ib. 583. [30] *Matth. Paris. Wilk.* 288. b. 290. b. 292. b. *Tyrrell*, V. 2. CIII. Script. poſt *Bed.* 478, 29. *W. Gemitic.* L. 7. c. 23. — *Camd.* Angl. &c. 679. *Dugd.* 7. a. 8. a. 9. a. *Wilk.* 215. *Chron. Saxon.* 191. [31] Scriptt. poſt *Bed.* 382, 48. *Chron. Saxon.* ad An. 1096. *Hoved.* Pt. 1. p. 466. Nu. 10. & 20. *Madox* Hiſt. Exchequer, p. 6. *Hawk.* P. C. II. p. 443.

Truth. Moſt other Kingdoms do the ſame: Now, what Man is there ſo ſtout or reſolute, who has once gone thro' this Horrid Trial by Torture, be He never ſo Innocent, who will not rather confeſs himſelf Guilty of all Kinds of Wickedneſs, than undergo the Like Tortures a Second time? Who would not rather Dye once, ſince Death would put an end to all his Fears, than to be killed ſo many times, and ſuffer ſo many Helliſh Tortures, more terrible than Death it ſelf? Don't You remember, My Prince, a Criminal, who, when upon the Rack, impeached (of Treaſon) a certain Noble Knight, a Man of Worth and Loyalty, and declared that They were both concerned together in the ſame Conſpiracy: And, being taken down from the Rack, He ſtill perſiſted in the Accuſation, leaſt he ſhould again be put to the Queſtion. Nevertheleſs, being ſo much hurt and reduced by the Severity of the Puniſhment, that He was brought almoſt to the Point of Death, after He had the *Viaticum* and Sacraments adminiſtred to him, He then confeſſed, and took a very Solemn Oath upon it, by the Body of Chriſt; and as He was now, as he imagined, juſt going to expire; He affirmed that the ſaid Worthy Knight was innocent and clear of every thing He had laid to his Charge: He added, that the *Tortures* He was put to were ſo intolerable, that, rather than ſuffer them over again, He would accuſe the ſame Perſon of the ſame Crimes; Nay, his own Father; Tho' when He ſaid this, He was in the Bitterneſs of Death, when all Hopes of Recovery were over. Neither did He at laſt eſcape that Ignominious Death, for He was hanged; and, at the Time and Place of his Execution, He acquitted the ſaid Knight of the Crimes wherewith he had, not long before, charged Him. Such Confeſſions as theſe, Alaſs! a great many others of thoſe Poor Wretches make, not led by a regard to Truth, but compelled to it, by the Exquiſiteneſs of their Torments: Now, what Certainty can there ariſe from ſuch extorted Confeſſions; But, ſuppoſe a Perſon falſely accuſed ſhould have ſo much Courage, ſo much Senſe of a Life after this, as, amidſt the Terrors of this Fiery Trial (like the Three Young Jews of Old. *Dan.* III.) neither to diſhonour God, nor lye to the Damnation of his Soul, ſo that the Judge ſhould hereupon pronounce Him Innocent: Does (f) He not with the ſame Breath Pronounce himſelf Guilty of all that Cruel Puniſhment, which he inflicted upon ſuch Perſon *undeſervedly?* And how *Inhuman*

have their Eyes pulled out, be gelt, and loſe their Right Hand. " Si quis Dominum ſuum oc-
" cidat, ſi capiatur, nullo modo ſe redimat, ſed *decomatione*, vel *excoriatione* ſevere gentium ani-
" madverſione dampnetur, ut diris tormentorum cruciatibus, & malæ Mortis infortunijs infelicem
" prius animam exhalaſſe, quam finem doloribus excepiſſe, videatur.] Forte *Decollatione*, vel
" *excoriatione*, vulgò, *Fleaing*, niſi exuſtione malis, *vivicomburium* intelligens. Forſan tamen
" recte hic *decomatione*. Audi enim Text. *Roffenſ.* L.L. *Cnuti* Latine exhibentem, par. 2. cap.
" 27. Auferatur *Corium Capitis cum Capillis*, quod *Angli* dicunt beharian [32]." The Earl of *Athol*, who was principally concerned in the Aſſaſſination of *James* I. of *Scotland*, amongſt other his Puniſhments, had a Crown of Red hot Iron put upon his Head, to denote that He was King of Traitors, and Perfidious Wretches. *Du Chene.* v. *Whitlock* M. 11. b. *Felton*'s Caſe, *Ruſhw.* I. 638, 9. *Eachard*, II. 69. v. *Chron. Saxon.* ſub. An. 1137.

(f) In the *Civil Laws* too much is left arbitrary to the Judge, and there may be ſome Reaſon to doubt whether Judges in that Law may not ſometimes err by having an Opportunity of that Latitude. Mr. W. quotes Dr. *Ridley's* View of the Civil Eccleſiaſtical Laws. p. 17.—20.

[32] *Wilk.* 268.

muſt *that Law* be, which does its utmoſt to condemn the Innocent, and convince the Judge of Cruelty? A Practice ſo Inhuman, deſerves not indeed to be called a Law, but the High Road to Hell. O Judge! in what School of Humanity did You learn this Cuſtom of being preſent and aſſiſting, while the accuſed Wretch is upon the Rack (g). The Execution of the Sentence of the Law upon Criminals is a Task fit only for *little Villains* to perform, picked out from amongſt the Refuſe of Mankind, who are thereby render'd Infamous for ever after, and unfit to act, or appear, in any Court of Juſtice. GOD Almighty does not execute his Judgments on the Damned by the Miniſtration of *Angels*, but of *Devils*; in *Purgatory*, they are not *Good Spirits*, which torment and exerciſe Souls, tho' Predeſtinated to Glory, but *Evil Spirits*. In this World, the Wicked, by the Permiſſion of GOD, inflict the Evil of Puniſhment on Sinners. For, when GOD ſaid, (1 *Kings* XXII. 20.) "Who ſhall perſwade *Ahab*, that He may go "up and fall at *Ramoth Gilead*," it was an *Evil Spirit* which came forth and ſaid, "I will be a lying Spirit in the Mouth of all "his Prophets:" Tho' GOD, for juſt Reaſons, had determined to ſuffer *Ahab* to be perſwaded, and deceived by a Lye, yet was it by no Means becoming a *Good Spirit* to be employed on ſuch an Errand. Perhaps, the Judge will ſay, I have done Nothing of my ſelf in inflicting theſe *Tortures*, which are not by Way of Puniſhment, but *Trial*; But, how does it differ, whether he does it himſelf, while He is preſent on the Bench, and, with reiterated Commands, aggravates the Nature of the Crime, and encourages the Officer in the Execution of his Office. It is only the Maſter of the Ship who brings her into Port, tho', in purſuance of his Orders, others ply the Steerage: For my own Part, I ſee not how 'tis poſſible for the Wound, which ſuch a Judge muſt give his own Conſcience, ever to cloſe up, or be healed; as long, at leaſt, as his Memory ſerves him to reflect upon the bitter Tortures ſo unjuſtly and inhumanly inflicted on the Innocent.

(g) All Laws make Executioners of ſuch as are condemned Perſons, and who have their Lives given them, with this Intention, that they may ſerve the Publick in that Neceſſary Office, which is infamous to a Proverb. It is related of *Hen.* VI. that He was ſo mild and merciful, that He could not endure the Quarters of a Traitor to be hanged up for Him. W.

CHAP. XXIII.

The Civil Laws Defective in doing Juſtice.

FUrther, if a Right accrues to a Man to plead upon a Tryal, which ariſes from a (a) *Contract*, a *Fact* done, a (b) *Title of Inheritance*; or the like: In theſe Caſes, if either there were no

 Witneſſes

(a) "Actiones erant præſcriptæ verborum agendi Formulæ pro Naturâ cujuſq; Negotii. — Upon the Principle of a Contract the Laws of Nations allow every Man his *Jus proſequendi in Judicio quod ſibi debetur.* — A Reciprocation is abſolutely Neceſſary in Contracts, and, the Perſons, who contract, muſt be fit and proper, otherwiſe the Contracts are inſignificant, and not actionable. W.

(b) *Title of Inheritance*] Patrimonial and Succeſſive, Donative or Teſtamentary, Acquired or Purchaſed.

Witneſſes at the Firſt; or, if they that were, are dead, the *Plaintiff* will be obliged to drop his Action, unleſs He can prove his Right by ſuch ſtrong Circumſtantial Proofs, as are not to be evaded, which ſeldom happens. Where Lordſhips, and other Poſſeſſions are in Diſpute; and in all other Actions which fall under the Juriſdiction of the *Civil Law*, the Actions of the *Plaintiffs* are very often rendered incapable of being brought to an Iſſue for Want of Evidence, ſo that ſcarce one Half of them can attain the End propoſed: Under what Denomination then is that Law to be ranged, which, where Parties are injured, is ſo defective in making Satisfaction. I queſtion whether ſuch a Law can be called juſt, if that be true which this very Law informs Us, (Viz.) " (c) That " Juſtice gives to every One their Due;" which ſuch a Law as this moſt certainly does not.

purchaſed. Of this v. *Bracton* *. It was the Portion of the Children of the former Poſſeſſor, who were termed *Hæredes Neceſſarij*, and to whom it came by the Law of the Twelve Tables; v. *Pitiſc.* Hæres Neceſſarius.

(c) " Juſtitia eſt conſtans & perpetua voluntas jus ſuum cuiq; tribuendi." *Juſtin. Inſt.* Lib. I. Tit. I. de Juſtitia, &c. *Aquin.* 312, 3.

* L. 2. c. 29. p. 62.

CHAP. XXIV.

The Diviſion of Counties concerning Sheriffs.

IT being thus explained how the *Civil Laws* direct the Judge concerning the Truth of a Fact, which is brought on to Trial, It remains to be explained how the Laws of *England* * boult out the Truth of a Fact, when it comes in Iſſue. The Manner of Proceeding in both Laws being laid, and compared together, their Qualities will appear the more eminently, according to that ſaying of the *Philoſopher*, " Oppoſites placed together give Light to one an- " other." But here, by Way of Introduction, and to borrow the Rule or Method uſed by Orators, it may be neceſſary to premiſe ſome Things, a right Underſtanding whereof will help to let us into a more clear and diſtinct Underſtanding of what follows; I proceed thus: *England* is divided into *Counties*, as *France* is into *Bailiwicks*, or *Provinces*, ſo that there is no Place in *England*, which is not within the Body of ſome *County*: Counties are divided into *Hundreds*, which in ſome Parts of *England* are called, a(9), *Wapentakes*,

I

* Hale H. L. p. 25. b.

a (9) *Wapentagia*,] In *Ethelred*'s Laws, which the Abbot *John Brompton* hath in a MS. Story, *cap.* 4. " *Habeantur Placita in ſingulis* Wapentakis *ut exeant Seniores* XII *Thayni & præpoſitus* " *cum eis, & Jurent ſuper Sanctuarium quod eis dabitur in manus, quod neminem innocentem velint* " *accuſare vel noxium concelare.*" And the Laws called the *Confeſſor*'s, *cap.* 33. ſay that *Yorkſhire*, *Lincoln*, *Nottingham*, *Leiceſter*, and *Northampton*, call that *Wapentachium quod Angli vocant Hundredum, & non ſine cauſa.* For he that was *Præfectus Wapentachij*, or High Conſtable of the *Wapentake*, came amongſt them at the *Hundred* or *Wapentake* Court, and with regardful Entertainment, they all *Cum Lanceis ſuis ipſius haſtam tangebant & ita ſe confirmabant per Contactum armorum, pace palam conceſſa, Anglice n.* (ſo ſay thoſe Laws) *Arma vocantur* þæpnu & tacape, *confirmare, quaſi armorum Confirmatio, vel ut magis expreſſe ſecundum linguam Anglicam dicamus* Wapentac *armorum tactus eſt*[1]. þæpnu, *n. arma ſonat*, tac, *tactus eſt.* Doubtleſs this Deduction of the Name

[1] 2 *Inſt.* 99.

pentakes, and *Hundreds* again, are ſubdivided into, b(10), *Vills*, under which Appellation *Cities* and *Boroughs* are included. The Boundaries of thoſe Vills are not aſcertained by Walls, Buildings or Streets;

Name ſavours of the Truth [2]. For amongſt the *old Germans*, whence our *Anglo-Saxons* came, that uſed to meet armed in their Courts, when any one had ſpoken, if he were diſliked, *fremitu aſpernabantur*, if liked, *frameas concutiebant*, as *Tacitus* Witneſſes; which well includes this touching or ſtriking together of Weapons. *Honoratiſſimum*, ſays he, *Aſſenſus Genus eſt, armis Laudare*. The Wapentakes, Hundreds, and Counties, were firſt inſtituted by King *Alfred* about the Year DCCC.LXXX. Of him *Ingulphus* [3], *pag.* 495. *b. Totius Angliæ Pagos & provincias in Comitatus primus omnium commutavit; Comitatus in Centurias, id eſt*, Hundredas, *& in* decimas, *id eſt, Tythingas diviſit*. See alſo *Malmesburienſ. de geſt. reg. lib.* 2. *cap.* 4. * Scriptt. poſt Bed. 44. l. 36. Spelm. Reliq. 219.

Spelman [4] has it (quod *Aluredo* attributum eſt) *ſc. Regnum diſtributum in Comitatus*. The Lord *Coke* [5] ſays, That "King *Alfred* ſettled the *Centuries*, commonly called *Hundreds*, and the *Tithings*, "but that the Realm was divided into *Counties* long before.—" *Wapentakes*,] Some call them *Hundreds*, becauſe they were the Tenth Part of a *County*, in which dwelt *Centum Pacis Regiæ Fidei juſſores* [6]. Mr. *Lambard* in his Explication of *Saxon* Words, adds, that the Word *Wapentake*, is ſpecially uſed by the Northern Counties beyond the *Trent*, "Qui ultra *Watlingſtrete* ſunt [7] *Wapen-* "*take*, Anglicè, idem eſt quod arma capere, eo quod in primo adventu novi Domini ſolebant Te- "nentes reddere Arma ſua pro Homagio [8]." An *Hundred*, or *Lath*, *Rape* or *Wapentake* be called of the Diviſions of Shires in divers Counties, diverſly named, after the Manners and Language of each County. For the Shires be divided ſome into X. XII. and ſo on to XXX. Hundreds, more or leſs. . . . . *Lath* and *Rape*, I take to be Names of Service, for that ſo many Towns in old Time, and in the firſt Poverty of the Realm, did meet together in one Day to carry the Lord's Corn into his Barn, which is called in Old Engliſh, a **Lath**: Or, that they met at the Commandment of the Lord to reap his Corn. *Wapentake*, I ſuppoſe came of the *Danes*, or peradventure, of the *Saxons* [9]. The **Statute** 3 *Hen.* V. 2. mentions the Courts of *Stancliffe* and *Frendles*, *Wapentakes* in *Craven* in *Yorkſhire*. Inſtances of the ſeveral Diviſions of our Shires or Counties, diverſly named, after the Manner and Language of each County. Coulbye, York. *North Riding* Lanbargh *Liberties*— Cowley, Heref. *Radlowh.*—Cowley, Worceſter, *Worceſter Limits*— Cowley, York. North Riding, *Stratforth Wap.* Cowling, Kent. *Aylesford Lath*— Crabbet, Suſſex, *Lewes Rape*. Cowthorp, *Lincolnſhire*, *Calceworth Wapentake*. *Lindſey Diviſion* [10]. *Wapentake*. h. e. "Quietancia de Sectis & Hundredis, quod dicitur *Vapentake* [11]." Wapentake] "Vox Fo- "renſis, non ab armorum Aſſumptione, ut *Hovedeno* placet [12], Sed, ut *Somner* ingenioſe, pro ſoli- "to, divinat, ab armorum redditione, quam Domino, in Subjectionis Signum, præſtabant," ſc. ab A. S. *Wæpen*, arma, & **Getacan** — tradere, reddere [13] - - - - a *Sax.* **ꝩæpen**, *Germani* **Wapende mannen**, ſive **Gewapende** ——— dixerunt pro Vaſſallis minoribus, quos alias arimannos vocant [14]. "*Hugo de Puſaz, Dunelmenſis* Epiſcopus emit ſibi, & Eccleſiæ ſuæ Villam Regis, "quæ *Seggesfield* appellatur, cum *Vapintakio* & omnibus pertinentijs ſuis" [15]. Mr. *Camden* takes Notice of a *Wapentake Court* for Trial of Actions under XL s. v. *Mirrour*, c. 1. § 2. *Monaſt. Anglic.* To. 1. p. 47.— To. 3. p. 262. 267. & alibi. apud *Bromptonum*. X Script. 1162, 30— 1173, 4. *Dugd.* 22. b. 23. a. *Norden*, Cornwall 29. *Cooke* CXVII. VIII. *St. Amand.* 68. 172. *Wilk.* 203. & Gloſſ. ad v. *Tyrrell*, I. Introd. LXXX. LXXXVI. *Seld.* III. 649. *Rapin*, I. 344,5. Aluredi Beverlacenſis Annal. pp. 82. 97.

b (10) *Villas.*] *Villa* & *Villata* de *Norwich*, de *Wallingford*, and the like, are in old Rolls, which alſo ſometimes call like Places, and the ſame, *burgi* or *Civitates*. And the City of *Chicheſter* is *Villata de Ciceſtria* in *Itin. Suſſex.* 47. *Henric.* III. *rot.* 25. *in dorſo*, and there *rot.* 44. *Burgus de* Horſham *venit per* XII. *Villa de* Brembre *venit per* XII. *Villa de* Shoreham *venit per* XII. Yet *Bramber* and *Shoreham* are Boroughs as well as *Horeſham*; Parliamentary Boroughs. But alſo *Rot.* 38. is *Burgus de* Seford *venit per* XII. which is no Parliamentary Borough [16]. The Reſt, all which now ſend Burgeſſes to Parliament in *Suſſex*, as *Lewes*, *Midhurſt*, *Steyning*, *Grenſtede* and *Arundel*, are in that Eire called Boroughs. Selden.

Seaford is the Eighth Cinque Port, united to that of *Haſtings* by *Hen.* VIII. Who incorporated the ſame by the Stile of Bailiffs and Commonalty of the Town, Pariſh and Borough of *Seaford*. The Bailiff, by Himſelf, or Deputy, holds a Court every fifteen Days, to hear and determine according to the Laws of *England* and the Cuſtoms of the *Cinque Ports* [17]. It ſhould ſeem that *Villæ*, *Burgi*,

---

[2] Scriptt. poſt *Bed.* 607. [3] Dr. *Fell*'s Edit. 28. 80.— Scriptt. poſt *Bed.* 870. l. 40. * Seld. [4] Gl. 141. a. v. *Gibſon*'s *Camd.* Div. of Britain CLXVII. [5] 1 *Inſt.* 109. b. 168. a.— 2 *Inſt.* 71. 99. *Fort.* 114. *Chamb.* p. 23. [6] X. Scriptt. 956, 7. *Somn.* ad v.v. Hundredum, Wapentakum. *Bract.* L. 3. Tr. 2. c. 1. § 1. p. 116. a. [7] *Du Freſne*, Scriptt. poſt *Bed.* 607, 20. [8] *Ran. Higden* Int. Scriptt. XV. à *Gale*, p. 201. v. *Flet.* L. 2. c. 61. § 21—23. [9] *Smith*'s Repub. Eng. p. 63— Ed. Elz. 212. [10] *Spelm.* Villare. [11] MS. in Bibl. *Cott.* Vitellius. *Cowell* Int. [12] Pars poſterior, ca. 33. Scriptt. poſt *Bed.* 607. [13] *Skinner* ad v. [14] *Spelm.* 563. b. v. LL. *Ethelredi* R. ap. *Wenetynqum.* Edit. c. 1. 4. W. 102. 3. LL. *Edw.* Conf. c. 13. *Wilkins* 199. [15] *Matth. Paris* 129, 30. & Gl. ib. [16] v. 4 *Inſt.* 222—4. 2 *Inſt.* 556. *Cowell*, Int. *Loft New Atlas* 1721. p. 200. Dr. *Harris*' Hiſt *Kent*, 466, 472. [17] Ib.

Streets; but, by a Compaſs of Fields, large Diſtricts of Land, ſome, c (11), *Hamlets*, and divers other Limits; as Rivers, Water-Courſes, Wood-Lands, and Waſtes of Common, which there is now no Occaſion to deſcribe by their particular Names; becauſe there is ſcarce any Place in *England*, but what is within the Limits of ſome Vill, tho' there be certain privileged Places within Vills, which are not reputed as Parts or Parcels of ſuch Vills; farther, there is in every County a certain Officer, called the King's (d) *Sheriff*, who, amongſt other Duties

Burgi, *Civitates*, were, in Our Chancellor's Time, Terms of Comprehenſion and confounded in Uſe; now a Days they are diſtinct: *Vills* being open, under the Officers of the Crown, as Parts of the County, *Boroughs* are Particular Governments and Corporations, by Preſcription, or Charter, and for the moſt part ſend Members to *Parliament*. *Cities* are accounted ſuch as Shire Towns Walled, having Seſſions and Courts within themſelves, and a Biſhop's See. W [18].

There are ſome who think and affirm that there is no *City* but where there is a Biſhop reſiant, and that *City* taketh it's Name of *Sedes*, the See or Seat of a Biſhop. *Anſ.* Cities had their Being and Beginning before any Biſhops [a] were at all known: For, as *Patrarius* ſaith, a City is a Multitude of People collected together, to live juſtly, and in good Order — *Iſidorus* [b] defineth a City in the like good Words, i. e. " He is One of that Number and Multitude, which is joined unto them that " will ſo live within Compaſs and Order according to the Rules of Law and Juſtice. —" *Polydore* ſaith, that Biſhops in Times paſt dwelt in *Pages* and *Villages*, and out of them, they were removed into Great Towns and Cities, as Places of better Safety; therefore *Richard Staniburſt* [c], in his Chronicle of *Ireland*, doth Engliſh (*Civitas*) Civitie, of the *Latin*, and not *Sedes*, See or Seat. *Metropolis* vocatur Urbs in Repub. aut regno aliquo præcipui Nominis & Auctoritatis, ubi Sedes & Religionis, & Juſtitiæ, & Majeſtatis Regiæ eſt. Quæ quidem tria Urbem aut Locum aliquem maximè efficiunt amabilem & auguſtam. Talis apud *Judæos* fuit *Hieroſolyma*; apud *Latinos Roma*, &c. *Chytræus*. [d]. v. Sadler 159. Wiſeman 116.

The Burgh of *Cambridge*, an Ancient City, as appears by a Judicial Record [19], in an Aſſiſe of *Darrein Preſentment*, for the Church of St. *Peter*'s in *Cambridge*, where *Mos Civitatis Cantabrigiæ* is found by the Oath of XII Men, the Recognitors of that Aſſiſe. 1 *Inſt.* 109. b. 115. b. 4 *Inſt.* 228. *Seld.* III. 2020. *Madox*, Firma Burgi 2, 3.

Wike, *Vicum* ſignificat, and *Vicus* (as *Vadianus* ſaith) in opido via eſt Domuum ſeriem complexa. *Vicus* (as *Varro* ſaith) ex Domibus conſtat, extra opida, *Vicus* idem eſt quod *Pagus*. *Norden* 52. * v. Saxon. Chron. Reg. Generales de nominibus Locorum; v. Alured. Beverl. An. 83.

c (11) *Hamletis*,] *Hameau* or *Hamel*, is a Member, or Part of ſome Vill or Town, as You may ſee in 14 *Aſſiſ. p.* 9. & 3 & 4 *Phil. & Mar. Dyer, fol.* 142. b. It came firſt from Ham or Hem in old Saxon, ſignifying a Circuit or Territory, *Circulum vel Septum quo Pagi ſive Territorij cujuſpiam Limites includuntur*, as the moſt Noble *Hans Douze* Notes out of the Records of *Holland* in *Annal. Holland. Lib.* 2 & 7. *fol.* 388. *Seld.* v. Somn. Dict.

Ham. q. Home. Many Habitations conjoined eminently, and Great Towns, have their Names ending in *Ham*, as *Buckingham*, &c. W. *Hamel*, *Hampſel*, Dimin. ab *Ham*, pro Villa. Dimenſio Vocis a Statuto *Exoniæ* [20] (Probably it ſhould be the Conſtitution, *Oxon.* in *Fleta*, L. 1. cap. 18. § 2. & ſeqq.) Edit. an. 14 *Edouardi* I. bene eſt obſervanda " Lez Noſmes de toutes les *Villes* & " *Hamlets* que Sount en ſon *Wapentake*, *Hundred*, ou *Franchiſe*, &c. Max. infra, Que ils ordei- " nent & facent venir de vant eux de Cheſcune ville entier, 8 homes:" & de dimie ville 6 Homes, & de Hamlette 4. Homes de pluis Sages & plus loyalx, horſpriſe les Seignours des Villes, demie " Villes & Hamlets avant noſmes, &c." e quibus ſuggeritur *Hamletam* eſſe Portionem Villæ, Dumidia minorem [21]. *Ham*, *Hamme*,] Voces *Saxonicæ* & *Theutonicæ*. Domus, Domicilium, Habitatio. Interdum, *Ham*, ſignificat *Vicum*, *Villam*, *Hamellum*. Dimin. Villula à Vico majori dependens, quæ Eccleſiam Parochialem non Habet: Noſtris, *Hamel*. *Hameau*, *Hamletta*, *um*, (noſtris *Hamelet*) occurrunt non ſemel apud Scriptor. Anglic. *Kitchin* [22] hath *Hamel* in the uſual Senſe, An Habitation. Who alſo uſeth *Hampſel*, for an old Houſe or Cottage decayed v. W. *Thorn.* int. X. Scriptt. 1956. 2092. *Bracton* L. 4. Tr. 1. c. 31. §. 3. *Flet.* L. 2. c. 24. § 13. *Mon. Angl.* I. 298. 963—II. 93. 4. 103. 209. *Du Freſne* ad v. *Skinner* ad v. Home. *Cowell.* 1 *Inſt.* 109. b. § 171. *Verſtegan* 176. 228. *Wilkins* Gl. ad v. hamrape. *Norden* 84. *St. Amand.* 69.

(d) *Vicecomes*,] Sheriff. This Officer came on in Succeſſion after the Earls of Counties, who Originally had the Charge and Government of the Counties. W. [23]. The Sheriff of the County was an Annual Officer in *England*, before the Conqueſt, and, among the Laws of *Edward* the Confeſſor, it is provided, " Quod *Aldermanni* in Civitatibus eandem habeant dignitatem, qualem habent " *Ballivi* Hundredorum in *Ballivis* ſuis ſub Vicecom" [24]. Mr. *Madox* [25], amongſt other Obſervations,

1

[18] *Fort.* 65. [a] *Fort.* 65. [b] *Hiſpalenſis* in Etymol. [c] *Nicholſon*'s Iriſh Hiſt. Lib. 4. 41. 43. [d] *Cic.* Verb. I. Or L. 2. XXXVII—II. Sext. 42. 880. a.—III. I Quint. 1. VI. 737. b—IV. Paradox. IV—Off. L. 1. XVII. *Pitiſc.* ad v. Civitas. [19] *Mich.* 7. R.I. Rot. 1. * Camd. XXII. [20] v. *Spelm.* ad. v. [21] *Spelm.* 2 *Inſt.* 174. [22] Of Courts 103. a. [23] Vid. *Fort.* 64. & ſeqq. 112. Note d. 123. &c. 1 *Inſt.* 109. b. 168. a. 2 *Inſt.* Index. Tit. Sheriff. *Seld.* III. 645, 6. 706. 1023. 1838. *Camd.* Div. *Britain* CLXIX. *Cowell.* [24] *Hale's* Hiſt. of the Law 118. [25] Hiſt. Excheq.— Dial. de Scaccar. 31. (e e)

ties of his Office, executes within his County all Mandates and Judgments of the King's Courts of Juſtice: He is an, e(12), Annual Officer; and, it is not lawful for Him, after the Expiration of his Year, to continue to act in his ſaid Office, neither ſhall He be taken in again to execute the ſaid Office within, f(13), two Years thence next enſuing. The Manner of his Election is thus: Every Year, on the Morrow of All Souls, there meet in the King's Court of *Exchequer* all the King's Counſellors, as well Lords Spiritual and Temporal, as all (g) other the King's Juſtices, all the Barons of the Exchequer, the Maſter of the (h) Rolls, and certain other Officers, when all of them, by Common Conſent, nominate Three of every County (i), *Knights* or *Eſquires*, Perſons of Diſtinction, and ſuch as they eſteem fitteſt qualified to bear the Office of *Sheriff* of that County, for the Year enſuing: The King only makes Choice of One out of the Three ſo nominated, and returned. Who, in Virtue of the King's Letters Patents, is conſtituted *High Sheriff* of that County, for which He is ſo choſen, for the Year then next enſuing. But, before He can take upon Him to act in Conſequence of the ſaid Letters Patents, He (k) ſhall ſwear upon the Holy Evangeliſts, amongſt other Clauſes, well, faithfully and Indifferently to execute and do his Duty for that Year, and that He will not receive any Thing

tions, has it, "Credibile videatur, *Vicecomitem* fuiſſe Regis, non Comitis, *Vicarium* . . . . He alſo obſerves, that, "After the Conqueſt, *Sheriffs* of Counties were appointed by the King, in an "Arbitrary Way: That is, ſome for a Quarter of a Year, ſome ſix Months, ſome, and that very "common, for many Years together; ſome others again, as it pleaſed the King, were made *Here-*"*ditary* Sheriffs." *Somner* ad v. *Aldermannus*, refers to *Spelman*, *Selden*, *Lambard*, *Cowell*, &c. v. *Dugd.* Cap. LXXVIII. *Norden* 29. *Tyrrell*, I. Introd. LXXIII. LXXV. *Wilk.* 204. 35. *Sir Robert Atkins*, D. P. v. Sadler 153. 155.

Comes, ſive, *Ealdormannus* habebat qui vices ſuas gerebant ad Jus dicendum in Pago & Vicis; in Majoris nominis oppidis & Urbibus, ubi Religionis & Mercaturæ cauſa, hominum frequentia erat, habebat ſuos Gepeſar, qui idem munus obirent, & Port-gereſæ, vel Tun-gereſæ vocarentur. d. e. p. 10.

Gepeſa, *Vicecomitem*, *Præpoſitum* Urbis vel Portûs, tungepeſam & portgepeſam dictum, item gepeſam Hundredi vel Trithingæ ut & *Decurionem* ſignificat. ib. 21. (3)

Scipman, Scipgman, Scipgepeſa, i. e. *Judex Comitatûs*, *Judex Provinciæ*. ib. 60. 80. k. v. *Atkins*, P. p. 31.

e(12) *Annale eſt*,] But before the Statute of 14 *Ed.* 3. *cap.* 7. Shrifes continued uſually in their Offices longer. *Seld.* v. *Fuller*'s Worthies. Liſt of *Sheriffs* paſſim; v. *Atkins*, D. P. 30. & alibi, v. ib. p. 53. *Stillingf.* 42, 3.

f(13) *Nec duobus*,] It ſhould be *nec Tribus* by *Stat.* I. *Rich.* 2. *Cap.* 11. Seld. v. Statt. Lincoln. 9 Ed. II. St. 2. (*Keb.* 79. *Raſt.* Tit. Sheriffs, 2.) 12 R. II. 2. 23 Hen. VI 8.

(g) The Words of the Statute [26] are, "By the Chancellor, Treaſurer and Chief Baron of the "Exchequer, taking to them the Chief Juſtices of the One Bench and of the other, if they be pre-"ſent." V. 33 H. VI. 1. Lord *Macc.* Trial 141. b. &c.

(h) *Clericus Rotulorum.*] Maſter of the Rolls. As the Officers of the Courts of Law were often Clergymen, they go under the Term *Clericus* [27]. This Great Officer, here called, *Clericus Rotulorum*, is in the Stat. *Hen.* VIII. [28] called, the Maſter of the Rolls, "*Gardein des Rolls de Noſtre* "*Cancellarie*." So ſays the old Inſtrument, *de forma Mittendi extractas ad Scaccarium*. Veter. M. Carta part 2. p. 47. B. W. 4 *Inſt.* 95. Lord *Macc.* Trial 228. a.

(i) The **Statute** of *Lincoln* requires, "That He ſhall have Eſtate, that is, have ſufficient "Lands within the Shire to anſwer the King and his People, and not to be in Service." 9 *Ed.* II. **Statute** of *Sheriffs*. 4 *Ed.* III. 9. 5 *Ed.* III. 4. 1 R. II. 11. W. *reſident*, *dwelling and abiding in the County*.

(k) If the Sheriff do not purſue his Oath of Office, he will be liable to be proſecuted for Perjury, to ſuffer Impriſonment, and Ranſom at the Will of the King [29]. The Sheriff is ſworn to execute Proceſs [30]. An. 1629. 5 Caroli. *Walter Long*, *Eſq;* was, in an unprecedented Manner, proſecuted in the Star-Chamber, for that He, being High Sheriff of *Wiltſhire*, had ſuffered Himſelf to be choſen a Member for *Bath* in *Somerſetſhire*; and had accordingly attended in Parliament, abſenting

[26] 14 Ed. III. 7. *Raſt.* 12. [27] V. 9 Ed. II. 8. [28] 14 & 15 H. VIII. 8. § 3.
[29] *Crompton*'s Juſtice 183. a. *Dyer* 60. *Trewinnard*'s Caſe. [30] *Wilkinſon*'s Office of a Coroner and Sheriff, p. 54.

Thing, under Pretext or Colour of his ſaid Office, from any one, other than and except from the King's Majeſty. This being premiſed, let us now proceed to thoſe other Matters which fall in with our preſent Enquiry. [*Hale*'s Hiſt. Law, Chap. XII.

Himſelf, during that Time, from *Wiltſhire:* In this Caſe, the Court ordered, adjudged and decreed, that he ſhould ſtand and be committed to the Priſon of the *Tower*, there to remain during his Majeſty's Pleaſure, and alſo to pay a Fine of *Two Thouſand Marks* to his Majeſty's Uſe, and farther make his Humble Submiſſion and Acknowledgment of his Offence, both in the Court of *Star-Chamber*, and to his Majeſty, before his thence Enlargement. An extraordinary Caſe, eſpecially ſince that Queſtion had been lately determined in favour of Sir *Edward Coke* [31], late Lord Chief Juſtice, who being made High Sheriff of *Buckinghamſhire*, on Purpoſe to prevent his being choſen a Member of Parliament, and nevertheleſs had been choſen a Member for a Burough, in another County; and his Election had been voted and reſolved to be Good, by the Houſe of Commons. *Ruſhw.* I. 684, 197. *Baker*, 495. v. The Sheriff's Oath, *Kilburne*'s Juſtice 311. *Dalton*'s Office of a Sheriff, Fo. 4. 5 H. 4. Rot. Parl. L. 1. 2. N. 4. dorſ. excludes Sher. from being Members of Parliament. *Whitl.* M. 14, 415. a.

[31] *Rapin*, X. 34.

CHAP. XXV.

How Jurors are Choſen and Sworn.

WHenſoever the Parties (a), contending in the King's Courts, are come to the **Iſſue of the Plea**, upon the Matter of Fact, the (b) Juſtices forthwith, by Virtue of the *King's* (c) *Writ*, write to the *Sheriff* of the County, where the Fact is ſup-

(a) Plaintiffs and Defendants, *Actores & rei*, are, in all Laws, ſaid to *contend*, not ſo much from Anger and Choice, as Neceſſity. *In Curijs Regis Angliæ*] So far it is lawful and neceſſary. W.

(b) The *Juſtices* not only of the Courts at *Weſtminſter*, but alſo the *Juſtices* of *Aſſiſe*. W. 1 *Inſt.* 263. a.

(c) *Breve Regis*] **The King's Writ.** The Writ of *Venire facias* iſſued forth according to the Common Law; And the Stat. *Hen.* VIII. is called *Scriptum Juſtitiariorum*, becauſe it is awarded and iſſues forth of the Office of *the Court* which they preſide *in*. This Authority to the Sheriff to ſummon a Jury, is termed, [1] *Breve*, as much as, *Breviarum*, in the *Civil Law*. "Rationum Libri, ſeu nominum & Debitorum *Breviaria*, nominabantur." It grew in Uſe with Lawyers very anciently here, to call the Summaries of the Cauſe, **Briefes**, or **Breves**, in *Engliſh*, **Writs**, becauſe *Written*. So *Bracton* [2] and *Fleta* [3]. "Dicuntur *Brevia*, cum ſint "formata ad Similitudinem Regulæ Juris, quæ *breviter & paucis verbis* Intentionem proferentis "exponunt & explanant, ſicut Regula Juris rem, quæ eſt, *brevitèr* enarrat [4]. *Brevia* vocamus "Membranulas Sigillo Regio firmatas, quibus *Imperatoria brevitate* Princeps aliquod mandat, aut "prohibet. *Hæc mittunt Hominem in Miſericordia Regis.* Infractio pacis, Contemptus *Brevium* "ſuorum, &c [5]." *Fitzherbert* [6] ſaith of them, that they be thoſe Foundations, whereupon the whole Law doth depend. — **Original Writs** are ſo artificially compiled, that it is impoſſible to Comprehend ſo much Matter, ſo perſpicuouſly, in fewer Words [7]. * "Cum *Glanvillæ* tracta-"tum Legerem, non poſſum non credere quin *Brevium* uſus tum primùm iniret cum *Majorum* "*Gentium cauſæ*, tam *Civiles*, quam *Criminales*, a Curiis Comitatus, ad Curiam Dom. R. pri-"mum traherentur. — Tum enim, ut videtur, *Summus R. Juſticiarius* in omnes partes *Angliæ* ſua "*Brevia* expedire ſatageret, quibus non opus eſſet, dum in Comitatibus omne Genus cauſas "agere & determinare mos apud *Anglos* eſſet [8]. *Breve*, quo reus in Jus vocatur, *ſummariam* "*& ſuccinctam facti repetitionem* continet, quod Actionem peperit; *Brevia*, quæ Judicium in-"choant, *Originalia*; quæ inchoatum promovent & ad exitum pellunt, *Judicialia* noſtri appel-"lant. *Cowell*, Inſt. 270, 1. *St. Amand.* 192.

[1] C. 6. [2] L. 3. Tr. 1. c. 12. §. 2. p. — L. 5. Tr. 5. c. 17. §. 2. p. [3] L. 2. c. 13. §. 2. [4] *Du Freſne*, ad v. Breve. [5] In Ll. Hen. I. c. 13. *Wilk.* 244. a. [6] Pref. to N. B. [7] 1 *Inſt.* 73, b. *Seld.* III. 1915. — Nott. ad *Hengham*, p. 122. * V. *Hengham* hic infra, p. 3. [8] *Hickes*, d. e. 8, 48.

poſed to be, that he would cauſe to (d) come before them, at a certain Day, by them appointed, (e) *Twelve Good and Lawful Men* of the Neighbourhood, where the Fact is ſuppoſed, who ſtand in no Relation to either of the Parties who are at Iſſue, in order to enquire (f) and know upon their Oaths, if the Fact be ſo as

(d) The Sheriff is by *Summons* to notify to them their Return, and ſhew them the *Pannel*; and, if any *Juror* be returned, who is not ſummoned, the *Sheriff* is fineable: And, in Caſe a *Juror*, having no juſt Excuſe, which the Law allows, ſhall not appear, but make Default, ſuch *Juror* ſhall loſe the Iſſues upon them returned. W. ℣. 35 *Hen.* VIII. 6.

(e) *Duodecim probos & Legales Homines*] *Sacramentales*, Men who know and make Conſcience of their Oath: Men who are Retainers to no great Lord. *De vicineto*] Next Neighbours, moſt ſufficient and leaſt ſuſpicious, neither indigent nor biaſſed, diſintereſted in point of Alliance or Profit [9]. Such as may diſpend Forty Shillings by the Year, at the leaſt, of Eſtate of Freehold, out of **Ancient Demean**, within the County where the Iſſue is to be tried. So ſays the **Stat.** 35 *Hen.* VIII. 6. §. III. (3). W. *Hales'* Hiſt. L. P. 253. *Read. on Statt.* IV. p. 92. *Tyrrel*, I. Introd. CXXIII. LXXV. V. Wiſeman 140.

(f) *Ad recognoſcendum*] i. e. The **Jury** are to follow the Cauſe with Attention thro'out the whole Evidence, and, when they are gone from the Bar, they are ſo to make uſe of their Memories, Notes, and Obſervations, that when they return into Court, and being demanded whether they are all agreed, ſhall anſwer, by their Foreman, what the common Concluſion of them all is, and this the Laws call, their **Verdict**, a *True Report*, or, a *Report of the Truth*. W. "*Duo-*" *decim viri* (**namd**) damnant vel abſolvunt, ſed non judicant, vel, ut nos dicimus, penes eos " eſt facti probatio, vel improbatio; vel, in cauſa omni, quòad factum, decernunt, & ex eorum " Judicio, quod veredictum dicimus, Judex vel Judices ſententiam ſuam proferunt, & de jure " pronunciant." *Hickes*, d. e. 40. m. d.

Cauſa, quæ in Comitatus Cantwarenſis curiâ, inter *Gundulphum Hrofenſem* Epiſcopum, qui *Actor*, vel *querelans* erat; & *Pichot* Vice-comitem, qui erat *reus*, vel *querelatus*, diſceptata & determinata fuit, *Gulielmo Conqueſtore*, cujus Controverſiæ Commentarius extat in *Textu Roffenſi*, omnium, quæ ubi ubi fide dignæ, quod ſcimus, ſuperſunt, prima eſt, in qua *duodecim virorum*, quos *Juratos* vocamus, mentio clara & perſpicua habetur. . . . præcepit, ut ſi verum eſſe, quod dicebant, ſcirent, ex ſeipſis DUODECIM eligerent, qui, quod omnes dixerant, jurejurando confirmarent. . . . . Illuc fecit venire multos ex *melioribus* totius *Angliæ Baronibus*] Ut par eſt credere, *Barones*, vel *Liberos Homines* XXIV. Quia mos ante multa Sæcula fuit duplicandi JURATORUM numerum. quando XII. Viri *Juratæ Judiciariæ* falſi Sacramenti, ſive perjurij, arguendi forent. *Hickes'* d. e. 32, 3.

Quod ad Ll. *Ethelredi* apud *Venetyngum* latas [10] de XII. *virali Judicio*, a *Bromptono* recitatas, [11] *Dufreſnius* alijq; inquiunt, " Hæc ad judicum potius numerum videntur ſpectare [12]." Quod ad ejuſdem *S. C. de Monticolis Walliæ* [13]. Duodeni, jure conſulti, quorum ſex *Angli* & ſex *Walli* erant, *Anglis* & *Wallis* jus dicunto —— Hos fuiſſe Judices in dicundo jure pares, vel collegas & conſeſſores ejuſdem tribunalis, qui eædem ſemper perſonæ erant, & non *juratores*, qui pro conſeſſuum, vel cauſarum numero, mutari, & de novo conſcribi ſolebant, ex verbis ipſis conſtat [14], Fœdus inter *Aluredum*, & *Guthrunum* R. R. ictum [15], ſic ſe habet Latine, "*Thanus Regis*, ſi " quando Homicidij incuſetur, liberet & compurget ſe ab illata Accuſatione, juramento XII. Regis " *Thanorum* conſacramentalium, ſi id facere audeat; verum ſi quis *Thanus*, qui *Regis Thano* ſit in" ferior, accuſetur; compurget ſe cum Sacramento undecim parium ſuorum, & unius *Thanorum* " *Regis*. Ex hac Lege Statutum eſſe de compurgatorum numero conſtat. Hoc *vadium Legis* appellant Practici noſtri, ſic à diſceptatione cauſarum per XII. *juratos*, toto cælo differt. Diverſa juris nomina, diverſi cauſas determinandi ritus, ſunt *Compurgatio*, & *de ſumma Litis*, quoàd factum XII. *juratorum*. Numerus compurgatorum incertus erat, ut qui augeri ſolebat, pro rei vel cauſæ, quæ agebatur, momento; & pro numero conſacramentalium qui jurabant, compurgatio *majus vel minus Sacramentum* dictum eſt. At numerus juratorum in cauſis, tàm civilibus, quàm criminalibus, duodenus ſemper erat, ſicut nunc eſt. Heic loci, Statuentibus *Aluredo* & *Guthruno* R. R. libero illorum arbitrio, caſuiq; tribuendum eſt. *Hickes*, d. e. 34, 5.

Notandum eſt, *duodecem juratores*, è comitatus *Liberis Hominibus*, non à vicecomite, vel ab eo, qui illius munere fungeretur, nominatos fuiſſe. ib.

A *Nortmannis* Anglorum Dominis *Juratæ Duodecim-viralis*, ſive *Delatoriæ* ſive *Judiciariæ*, quum *Civilis*, tum *Criminalis* inſtitutum accerſendum, ut credam facit, non tantum in *Saxonicis*, quæ ſuperſunt, altum de eo Silentium, ſed quod, poſt ingreſſum *Nortmannorum* conſuetudinis, ſive Legis vigorem non ante *Henrici Secundi* tempora id habuiſſe conſtat [16]. Dr. *Hickes* quotes *Ingulph* [17], and the *Cotton Library*. Where the Cauſes were determined (temps. W. *Rufus* & King Stephen) in conſeſſu Comitatûs. . . . per Judicium totius Comitatus, nullâ *Duodecim virorum Juratorum* mentione habitâ [18]. In Legibus & Conſtitutionibus *Gallo-Nortmannicè* promulgatis [19], —

quas

[9] V. 1 *Inſt.* 155. a. [10] C. 4. [11] X. Script. 896. IV. *Du Freſne*, To. 2. Pt. 2. 186. *Seld.* II. 1003. [12] *Hickes*, d. e. 34. [13] Cap. 3. [14] *Hickes*, d. e. 34. [15] Cap. 3. [16] *Hickes*, d. e. 36. [17] Edit. *Oxon.* p. 707. *Fauſtina* A. 3. 11. 31. [18] *Hickes*, d. e. 36. [19] V. *Ingulph.* Oxon. Edit. p. 8. & Archaionomiam *Lamberti* Cantabrigiæ editam 1644. & Notas *Seldeni* ad *Eadmerum*, p. 171.

as One of the Parties alledges, or whether it be as the other contends it, with him. At which Day the *Sheriff* ſhall make return of the ſaid **Writ** before the ſame Juſtices, with a (g) *Panel* of the Names of them whom He had ſummoned for that Purpoſe. In Caſe they appear, either Party may *challenge* the *Array*, and alledge, that the *Sheriff* hath acted therein partially, and in (h) Favour of the other Party (*viz.*) by ſummoning ſuch as are too much Parties in the Cauſe and not indifferent; which Exception, if it be found to be true upon the Oath of Two Men of the ſame *Panel*, pitched on by the *Juſtices*, the *Panel* ſhall immediately be quaſhed, and then the Juſtices ſhall write to the (i) *Coroners* of the ſame County, to make out a new *Panel*; in Caſe

quas *Victor Nortmannus Anglis* avita jura petentibus dedit, nullum *duodecim-viralis inſtituti* veſtigium, quod, me judice, in Ll. *Anglicanarum*, ſi dicam, *Deuteronomio*, non potuit non deſiderari, ſi in uſu, non dicam quotidiano, ſed aliquo, apud *Anglos* fuiſſet [20]. . . . ab antiquo obtinuit apud *Scanos*, & quæ è *Scania* vel *Scandia* profectæ ſunt gentes, à quibus *Nortmanni* oriundi ſunt, ejuſdem uſus. Hinc apud veteres *Danos*, *Suecos* & *Norvegos* multa de hoc Inſtituto, quod **namd** vel **næmd**, nunc **nemdd** vocant, leguntur. **namdd** autem, i. e. nominatio, vocatur apud eos *duodecim-viralis juratorum* numerus. quod illorum ſex quidem ab *actore* & totidem a *reo* nominarentur. *Hickes*, d. e. 37, 40, 1.

Magna aſſiſa] *Juratores* vel *Jurata* Domini Regis *Aſſiſa* dicuntur, quod eorum numerus decreto Regis tunc primum *aſſiſus*, i. e. *definitus* fuit. ib. 40. i.

In libro, cui Titulus **Legrant cuſtumier du païs e duche de Normandie**, ſæpe legitur de *duodecim-virali Juratorum inſtituto* [21]. de Inquiſitione [22]. de Brevi de ſtabilia [23]. de Judicio [24]. de *Juratoribus* [25] *duodecim-viri jurati*, *Jurata* ſimpliciter, *Jurata viceneti*, *Jurata patriæ*, immo & *vicenetum* & *patria*, non raro in codd. Ll. noſtrarum & in corpore juris *Normannici* vocantur [26]. *Duodecim-virale Judicium* apud *Anglos* à *Nortmannis* è *Scandia* potius quam à *Saxonibus* è *Germaniâ* profectis accerſendum puto, in veterum *Germanorum* Comitijs, in Lege *Lombardorum*, in Conſuetudinibus *feudalibus* duodeni juratorum numeri nulla mentio facta eſt. nam per omnes *Liberos Homines & parium Judicio* de cauſis cognoſcebant. *Hickes*, d. e. 41.

Cocus, in Prelectione ſua prima in Legem 27 E. 1. quæ a Forenſibus dicitur, *Statutum de Finibus levatis*, Duodecem-virale Judicium ante Victoriam *Normannicam* apud *Anglos* in uſu fuiſſe fruſtra it probatum ex, ſive *rotulo cenſuali*; **Doomſday-Book** vocato, quem, imperante S. *Edwardo*, *Confeſſore* dicto, factum fuiſſe contra fidem Hiſtoricorum (ſc. *Saxonum*) contendit. ib. 153.

Duodecem-virale Examen, ſive è *Normanniâ* ductum, ſive apud *Anglos* jam tum repertum, citò eſt amplexus *Gulielmus Conquæſtor* [27]. Verum non ſtatim obtinuit ac incepta eſt de cauſis per *duodecem — Viros juratos* forenſibus judicandi ratio, donec ad tollendam illam impiam *duelli* conſuetudinem ab H. II. inſtitueretur. Hoc plane affirmat *Glanvilla* [28], teſtis in hac re maxime idoneus H. II. conſenſu procerum totius regni *duodecem-virale Judicium* lege lata inſtituiſſe. Inter avitas conſuetudines & Leges, quas in *Angliâ* obſervari voluerunt *Nortmanni duodecim-virale Judicium* recenſuerunt [29].

Nortmanni è *Scandia* diſceſſerunt 50 circiter Annos poſt renovatum *duodecim-virale* cauſarum *judicium*, ſc. poſt Legem latam à *Regnero*, cognomento *Lodbrog*, qua cautum erat, ut ad tollendum *duellum*, *duodecim patrum* judicio lites omnes, more majorum, terminandæ mandarentur. *Gulielmus* I. quarto ab *Anglia* acquiſitâ anno, dicitur elegiſſe ex ſingulis Comitatibus duodecim *Anglos*, qui *jurati* Leges & conſuetudines ſuas ei declararent. itidem H. II. vitæ famæq; ſuorum conſulere volens, q. in remedium *duelli*, optionem eligendi Reo dedit, an *Singulari Certamine* experiri vellet, an litem finitam mallet per judicium *duodecim virorum juratorum*. v. *Spelm.* *Du Freſne.* *Cowell.* Int. *Lambert.* Eiren, lib. 4. cap. 3. *Wilk.* 328. *Hickes* 41. v. *Sadler* 183, 4.

(g) *Panel* is a Word of Art, applied to that Piece of Parchment which is Table-wiſe, in Figure oblong and narrow, wherein the **Jurors** Names be written and annexed to the Writ. A **Jury** is ſaid to be *impanelled*, when the *Sheriff* hath enter'd their Names into the *Panel*, or ſaid little Piece of Parchment, *in Panello Aſſiſæ*. W. So We ſay a *Panel* of Parchment, and the *Counterpaine* [30] of an Indenture. 1 *Inſt.* 158. b. *Spelm.* ad v. *Regiſter Orig.* 223. *Kitchen* 266. *Co. Lit.* §. 234. v. *Skinner* Et. Gen. & Et. Voc. Forenſ. *Hickes* 37.

(h) To Remedy this, was the Stat. *El.* [31] made, and that Juries excepted againſt might not hinder the Cauſes coming to Trial, the Stat. *Ph. & Mar.* [32] grants a *Tales de Circumſtantibus*, upon Requeſt, in a Suit commenced upon any Penal Statutes. W. v. 35 *Hen.* VIII. 6. §. VI. *Wood*'s Inſt. C. L. 591. ubi plura.

(i) *Coroner* is an Ancient Officer of great Credit. The Stat. [33] provides, " That thro' all

[20] *Hickes*, d. e. 36. [21] Cap. 117. [22] Fo. 143. Cap. 113. [23] Fo. 137. Cap. IX. [24] Fo. 17. Cap. 69. [25] Fo. 92. [26] *Hickes*, d. e. 41. b. [27] *Spelm.* [28] L. 2. c. 7. v. *Hickes*, 35, 6. [29] *Eadmer.* Hiſt. p. 6. [30] *Phillips*'s Dict. [31] 27 *El.* c. 6. [32] C. 7. [33] 3 *Ed.* I. 10.

Caſe that likewiſe ſhould be excepted againſt, and be made appear to be corrupt and vicious, this *Panel* ſhall alſo be quaſhed. Then the *Juſtices* ſhall chooſe Two of the Clerks in Court, or others of the ſame County, who, ſitting the Court, ſhall upon their Oaths, make an indifferent *Panel*, which ſhall be excepted to by neither of the Parties; But, being ſo *impanelled*, and appearing in Court, either Party may except againſt any particular Perſon; as He may at all Times, and in all Caſes, by alledging that the Perſon ſo *impanelled* is of Kin, either by Blood, or Affinity to the other Party; or in ſome ſuch particular Intereſt, as He can't be deemed an Indifferent Perſon to paſs between the Parties: Of which ſort of Exceptions there is ſo much Variety, as is impoſſible to ſhew in a ſmall Compaſs: If any one of the Exceptions be made appear to the Court to be true and reaſonable, then He againſt whom the Exception is taken, ſhall not be ſworn, but his Name ſhall be ſtruck out of the *Panel:* In like manner ſhall be done with all the reſt of the *Panel*, until Twelve be ſworn, ſo Indifferent, as to the Event of the Cauſe, that neither of the Parties can have reaſonable Matter of Challenge againſt them: Out of theſe Twelve, Four, at the leaſt, ſhall be, k(14), *Hundredors*, dwelling in the *Hundred*, where the *Vill* is ſituate, in which the Fact diſputed is ſuppoſed to be: And every one of the **Jury** ſhall have Lands, or Revenues, *for the Term of his Life*, of the yearly Value, at leaſt, of *Forty Shillings*. This Method is obſerved in all Actions and Cauſes, *Criminal*, *Real*, or *Perſonal*; except where, in Perſonal Actions the Damages, or Thing in Demand, ſhall not (l) exceed **Forty Marks**, *Engliſh* Money: Becauſe, in ſuch like Actions of ſmall Value, it is not neceſſary, nor required, that the Jurors ſhould be able to expend ſo much; but they are required to have Lands, or Revenues, to a competent Value, at the Diſcretion of the Juſtices; otherwiſe they ſhall not be accepted; leaſt, by reaſon of their (m) Meanneſs and Poverty, they may be liable to be eaſily bribed, or ſuborned: And in Caſe, after all Exceptions taken, ſo many be ſtruck out of the *Panel*, that there does not remain a ſufficient Number to make up the *Jury*, then it ſhall be given in charge to the Sheriff, by Virtue of the *King's Writ*, that He add more *Jurors*; which is uſually and

" Shires ſufficient Men ſhall be choſen to be Coroners, of the moſt diſcreet Knights that may beſt " attend ſuch Offices. *Keble* refers to the Stat. *de Officio Coronatoris* [34]." Who ſhall be Coroners, by whom and where to be choſen, ſee in the Margin [35]. *The Chief Juſtice* of the King's Bench is the Chief *Coroner* of *England*. 4 *Inſt.* 73. W. v. 2 *Inſt.* 174. & ſeqq. *Fleta*, L. 1. c. 18. & 25. *Hawkins's* P. C. B. 2. c. 9. Stat. *Magna Charta*, cap. 17. v. *Sadler* 307. (1).

(k) [14] *De Hundredo*] For the Number of the Hundredors at this Day, ſee the Statutes of 35 *Hen.* 8. *cap.* 6. & 27 *Eliz. c.* 6. *Seld.* . . . . this is ſince altered *per* 4 *Annæ*, c. 16. Sect. 6. & 7.

(l) The Value of *Jurors*, in great Cauſes, heretofore has been obſerved, *Forty Shillings* per Ann. of *Freehold*, out of **Ancient Demean**, or what is equivalent to it; ſince advanced to *Four Pounds Land*, by 27 *El.* c. 6. W. v. 1 *Inſt.* 272. a. 2 H. 5. c. 3. v. *Statt.* 11 H. 6. c. 1. 7 H. 7. c. 5. 23 H. 8. c. 13. *State Trials*, III. 197. a. b. v. 7 & 8 W. 3. c. 32. 3 & 4 Annæ, c. 18. 10 Annæ, c. 14. 3 G. 2. p. 519.

(m) " The more ſufficient Men be of Lands and Tenements, the more unlikely are they to be " driven or moved to Perjury, by Brocage, Power or Corruption," — are the Words of the *Stat.* 15 *Hen.* VI. 5. §. 1 (3).

[34] 4 *Ed.* I. Stat. 2. (*Keb.* p. 28.) 28 *Ed.* I. 3. 14 *Ed.* III. 8. 28 *Ed.* III. 6. [35] *Reg.* Fo. 117. F. N. B. 163. 2 *Hen.* V. 8. (9) 23 *Hen.* VI. 11. (2) 3 *Hen.* VII. 1. (13) 33 *Hen.* VIII. 12. 1 & 2 *Ph. & Mar.* c. 13. v. 52 *Hen.* III. 24. (*Keb.* p. 18.) 2 *Inſt.* 174, 5.

often done, that the Enquiry of the Truth upon the Iſſue in Queſtion may not remain undecided, for Want of Jurors. This is the Form how *Jurors*, who enquire into the Truth, ought to be returned, choſen and ſworn in the King's Courts of Juſtice: It remains to enquire and explain how they ought to be charged and informed as to their Declaration of the Truth of the Iſſue before them. [v. *Hales'* Hiſt. Law, Chap. XII. *Wilkins'* Pref. IX. & ſeqq.

CHAP. XXVI.

The Way of Proceeding in Civil Caſes.

TWelve Good and true Men being ſworn, as in the Manner above related, legally qualified, that is, having over and beſides their Moveables, Poſſeſſions in Land ſufficient (as was ſaid) wherewith to maintain their Rank and Station; neither ſuſpected by, nor at Variance with either of the Parties; *all* of the Neighbourhood; there ſhall be read to them, in Engliſh, by the Court, the (a) Record and Nature of the Plea, at length, which is depending between the Parties; and the Iſſue thereupon ſhall be plainly laid before them, concerning the Truth of which, thoſe who are ſo ſworn, are to certify the Court: Which done, each of the Parties, by (b) Themſelves or their Counſel, in Preſence of the Court, ſhall declare and lay open to the *Jury* all and ſingular the Matters and Evidences, whereby they think they may be able to inform the Court concerning the Truth of the *Point in Queſtion*; after which each of the Parties has a Liberty to produce before the Court all ſuch Witneſſes as they pleaſe, or can get to appear on their Behalf; who being charged upon their Oaths, ſhall give in Evidence all that They know touching the Truth of the Fact, concerning which the Parties are at *Iſſue:* And, if Neceſſity ſo require, the Witneſſes may be heard and examined apart, till they ſhall have depoſed all that they have to give in Evidence, ſo that what the One has declared ſhall not inform or induce another Witneſs of the ſame Side, to give his Evidence in the ſame Words, or to the very ſame Effect. The whole of the Evidence being gone thro', the *Jurors* ſhall confer together, at their Pleaſure, as they ſhall think moſt convenient, upon the Truth of the Iſſue before them; with as much Deliberation

I

(a) The Lawyers call the *Entry*, or rather the *Rolls* of the Court, a Record; but, in the Stat. *Hen.* VI. [1] 'tis called, Records or Proceſs-Records and Proceſſes [2]. W. "*Recorda* dicuntur "Regiarum Curiarum Actus Solennes, reſponſa, mandata, Judicia: Ipſæ etiam membranæ (*Rotu*- "*las* vocant) & Codices Publici quibus hæc inſeruntur & deſcribuntur [3]. *Recordum* proprie dicitur In- "quiſitio Juridica per Teſtes de re aliquâ dubiâ, quòd, Qui in ea audiuntur Teſtes, dicant ſe *re*- "*cordari* eorum de quibus inquiruntur [4]." In the *Civil Law* it is called "*Libellus Accuſationis* "h. e. Formula Scripti complectens Actionem & futuræ litis ſpeciem in Judicio: nihil aliud facit "quàm quòd jus perſequendi exhibet Judici cognituro de Cauſa. *Calvin.*

(b) Formerly thoſe, who knew how, and would venture their Cauſe upon their own Memory and Judgment, to manage it, were permitted to plead their own Cauſe: But, of late, it has not been ſo; no Court ordinarily allows the Parties to plead, eſpecially in *Civil* Caſes. Nor is it for their Advantage, ſo to do, who, being ignorant in the Laws, may, thro' Want of Judgment or Temper, injure their Right, in the Judgment of the Court upon it. W. *Hickes'* d. e. 8— ad *Ottleyum* XLII.

[1] 8 *Hen.* VI. 12. [2] 14 *Ed.* III. 6. 9 *Hen.* V. 4. 4 *Hen.* VI. 3. [3] *Spelm.* ad v. [4] *Du Freſne.*

tion and Leiſure as they can well deſire, being all the While in the Keeping of an Officer of the Court, in a Place aſſigned them for that Purpoſe, leſt any One ſhould attempt by indirect Methods to influence them as to their Opinion, which they are to give in to the Court. Laſtly, They are to return into Court and certify the Juſtices upon the Truth of the Iſſue ſo joined, in the Preſence of the Parties (if they pleaſe to be preſent) particularly the Perſon who is Plaintiff in the Cauſe; what the *Jurors* ſhall ſo certify in the *Laws of England*, is called (c) the **Verdict**. In Purſuance of which *Verdict*, the Juſtices ſhall render and form their Judgment. Notwithſtanding, if the (d) Party, againſt whom ſuch Verdict is obtained, complain that He is thereby aggrieved, He may ſue out a Writ of **Attaint**, both againſt the Jury, and alſo againſt the Party who obtained it; in Virtue of which, if it be found upon the Oath of (e) *Twenty-four Men* (returned in Manner before obſerved, choſen and ſworn in due Form of Law, who ought to have much *better Eſtates* than thoſe who were firſt returned and ſworn) that thoſe, who were of the Original *Panel* and ſworn to try the Fact, have given a Verdict, f(15), contrary to Evidence, and their Oath; Every One of the firſt *Jury* ſhall be (g) committed to the Publick Gaol, their

(c) At this Day, by the *Laws of England*, in Caſes of Trials by Twelve Men, all ought to agree, and any one diſſenting, no *Verdict* can be given; but, by the Laws of *Normandy*, though a *Verdict* ought to be by the concurring Conſent of Twelve Men; yet in Caſe of Diſſent or Diſagreement of the *Jury*, they uſed to put off the Leſſer Number that were Diſſenters, and added a Kind of *Tales* equal to the Greater Number ſo agreeing, until they had got a Verdict of Twelve Men that concurred [5]. And We may find ſome Ancient Footſteps of the like Uſe here in *England*, though long ſince antiquated [6]. The Law was (in the Time of King *Ethelred*) that, in a *Jury* of *Twelve*, the Agreement of *Eight* ſhould prevail, and make a Good *Verdict*, although, for a long Time together, it hath been, and yet is, otherwiſe uſed [7].

(d) Tho' *Verdicts* are not irreverſible, yet, as Judgments pronounced in the King's Courts, they muſt ſtand till they be revoked by *Attaint*, or a *Writ of Error*. W. This *Writ of Attaint* is almoſt out of Uſe; inſtead thereof, Motions are uſually made for new Trials, when a *Verdict* is againſt Evidence [8]. The Ancient Books call this Writ, *Breve de Convictione*, that is, a Writ to ſummon an Honeſt Jury to attaint a perjured One. W. [9]. "Juratores de Perjurio poterunt convin-" ci ſi male juraverint [10]. Si male juraverint Locus erit Convictioni. Si Falſum dixerint, con-" vincendi ſunt. *Fleta*, L. 4. c. 9. *Bract.* L. 4. Tr. 5. c. 4. 288. b. 2 *Inſt.* 237. *Cowell*, Inſt. L. 4. Tit. 18. § 45.

(e) This is the Direction of the Common Law. W. *Hawkins'* P. C. I. c. 72. § 9.

f(15) *Falſum fecerunt Sacramentum*,] The Ancient Puniſhment in *Attaint* was as it's here deſcrib'd, and the like in Conſpiracy for Perjury. See *Glanvil*, *lib.* 2. *cap.* 19. 4 *Hen.* 5. Tit. **Judgment**, 220. 27. *Aſſiſ. p.* 59 & 46. *Aſſiſ. pl.* 11. The Judgment is called the *Villanous Judgment in* 24 *Ed.* 3. * *fol.* 34. *b.* See *Bracton* alſo *lib.* 4. *Tract.* 5. *cap.* 5. & *Flet. lib.* 5. *cap.* 21. and *Stamford*, *fol.* 175. And the Caſe in *Temp. Ed.* I. *Tit.* **Attaint** 70. is more large in my MS. Report of 21 *Ed.* 1. *fol.* 58. It is brought againſt the Abbot of *Weſtminſter*, as there it's ſhewed; but the Judgment by *Weylond* is in theſe Words, **Pur ceo agarde ceſt court que ceux de l'enqueſt perdent franche ley de ceo jour en avant a tous jours e lour terres & leur chateus a la volonte le Roy, & lour cors a la Priſon, e John ſeit aſſous de cele rent & ſeit reſtore de ſes damages.** But ſee now Stat. 23 *Hen.* 8. *cap.* 3. another Judgment in *attaint*. Seld. *Falſum Sacramentum*— Falſe Serement, in the **Stat.** 23 *Hen.* VIII. 3. v. *Wilkins*, p. 17. Note (l) 49. Note (e) p. 328. b. *Vaughan's* Reports 141.

(g) The Judgment in *Attaint* againſt the Petty Jury, is as in the Caſe of Conſpiracy, at the Suit of the King, that is, to loſe the Freedom and Franchiſe of the Law (whereby He is diſabled to be put upon any Jury, or to be ſworn as a Witneſs, or even to appear in Perſon in any of the King's Courts. "Mes ne ſoit en teſmoignance de verite, ne approch le Court, &c.)" [11] That his Houſes, Lands and Goods ſhall be ſeiſed into the King's Hand, and his Houſes and Lands eſtreped [*made ſpoil of*] and waſted, his Trees rooted up and arraſed [*defaced, pluck'd up*] and his Body impriſoned [12]. In the Book Caſe 24 *Ed.* III. [13]. It is called the **Villainous Judgment**, probably, as

[5] *Coutumier*, c. 95. *Hale*, Hiſt. Law, p. 120. [6] Ib. *Bract.* L. 4. c. 19. § 4. 185. b. [7] *Lambert* Eiren. L. 4. c. 3. p. 400. [8] *Wood's* Inſt. C. L. 612. *Readings on the Stat.* IV. 102. [9] v. 1 *Inſt.* 294. b. [10] *Fleta*, L. 5. c. 21. * M. pl. 34. [11] M. 24. Ed. III. pl. 34. [12] *Hawk.* I. c. 72. § ult. 2 *Inſt.* 384. 562. 3 *Inſt.* 143. 164. 222. *Britton* 245. a. *Bract.* 292. b. [13] *Fitz.* A. Judgment, pl. 190.

their Goods ſhall be confiſcated, their Poſſeſſions ſeiſed into the King's Hands, their Habitations and Houſes ſhall be pulled down, their Woodlands ſhall be felled, their Meadows ſhall be plowed up, and they themſelves ſhall ever thence-forward be eſteemed, *in the Eye of the Law*, Infamous, and in no Caſe whatſoever, h(16), are they to be admitted to give Evidence in any *Court of Record*: The Party, who ſuffered in the former Trial, ſhall be reſtored to every Thing they gave againſt Him, thro' Occaſion of ſuch their *Falſe Verdict*: And, who then (tho' He ſhould have no Regard to Conſcience or Honeſty) being ſo charged upon his Oath, would not declare the Truth from the bare Apprehenſions and Shame of ſo Heavy a Puniſhment, and the very great Infamy which attends a contrary Behaviour: And, if perhaps, one or more amongſt them ſhould be ſo unthinking or daring, as to proſtitute their Character, yet the reſt of the *Jurors*, probably, will ſet a better Value on their Reputations than to ſuffer either their Good Name or Poſſeſſions to be deſtroyed and ſeiſed in ſuch a Manner: (i) Now, is not this Method of coming at the Truth better and more effectual, than that

as to the Perſons meriting it, who thereby, of *Freemen*, become *Villains*. W. It is called by the L. C. J. *Hale* [14]. The *Extraordinary Tryal*. The Severity of the Puniſhment is moderated by the *Statute* [15]. Attaint lieth againſt a *Jury* of XII Men, after Judgment, who have given a *Falſe Verdict* in any Court of Record, that the Judgment might be reverſed. The Plaintiff in the Attaint can give no more Evidence than was given at firſt; but the Defendant, in Affirmance of the Verdict may [16]. The *Villainous Judgment* at the Common Law, at the Suit of the King, is out of Uſe [17]. The Stat. *Weſtm.* 1. was the firſt concerning Attaints, in Affirmance of the Common Law [18]. A *Juror* is not to be proſecuted for his Verdict in Criminal Matters. *Hawkins* I. c. 72. § 5. *Vaughan*'s Reports 146. *Danv.* Abr. I. *Attaint* 594. pl. 6, 7, 8. 596. (D) (b) 597. (F) pl. 5. 599. (N) pl. 1. 600. (O) (a) (P) pl. 1. (c) (Q) pl. 1. (a) 601. pl. 1—10. (l) *Readings on the Stat.* Tit. *Attaint*.

h(16) *Nec alicubi recipientur in Teſtimonium Veritatis,*] Our Books expreſs that, by que miſe ne ſoit en teſtimoignance de veritye, 24 *Ed.* 3. [a] *fol.* 34. *b.* 33 *Hen.* 6. *fol.* 55. *a.* It is titled the Loſs of Frank Law, franch ley in 27 *Aſſiſ. pl.* 59. & 46. *Aſſiſ. pl.* 11. that is, he which is thus convict of Perjury, ſhall be no more Othesworth as *Bracton* [b] calls it *lib.* 4. *tract.* 4. *cap.* 5. & *cap.* 19. §. 2. where his Words are of ſuch a One. *Legem amittit, & ideo dicitur quod non eſt ulterius dignus lege, quod Anglicè dicitur,* He ne is othes worthe that is enes gylty of oth broken. Which agrees with K. *Knout* his Law, *cap.* 33. that one ſo convicted ne beo thanon forth athes worthe, [c] the ſelf ſame Words almoſt, being in *leg. Edwardi Senioris, cap.* 3. & *leg. Athelſtan. cap.* 25. That which is *legem amittere* in this Senſe in *Bracton*, is *liberam legem amittere* (anſwering to the Loſs of Frank Law) in the Entries of Judgment againſt them, and *legem terræ amittere* in *Glanvill*, and ſometime in *Bract.* and *Fleta*. See alſo *Regiam Majeſtatem, lib.* 1. *cap.* 14. § 5. Hence may be truly underſtood that of the Grand Charter, *cap.* 29.— *Nec ſuper eum ibimus nec ſuper eum mittemus, niſi per legale judicium Parium ſuorum vel per legem terræ.* I would Engliſh it thus: *Neither will We enter on his Poſſeſſion, nor commit him* (for in that Place of the * Charter of 17 of K. *John*, by which this was made, it is *nec eum in carcere mittemus*, perhaps it ſhould be *carcerem*, as the Language requires) *but by legal Judgment of his Peers, or Men of his Condition* (that is by Jury) *or by Tryal of him by Oath, or Wager and doing his Law. Lex Terræ* here is only as it ſignifies in *amittere legem terræ*. And Ley gager and a Jury are the Two Trials, as I ſuppoſe, there thought on. And indeed in old Rolls nothing is more uſual than in Criminal Actions (not capital) and Civil of any Kind, to admit *Ley gager*, as in *Attachments* upon *Prohibitions, Quare Impedits*, and the like, which is againſt all Knowledge and Practiſe of Law in later Ages. Every one knows that at this Day *Vadiare legem* is to offer the Oath upon Trial that Way, and *facere legem* is to make the Oath. All which ſhew that *Lex* and *Lex terræ* ſignify in this Notion only the Oath of a Man not diſabled by Law. And, in that Statute, it is meerly the Oath upon *Ley gager*. Seld.

(i) What the L. C. J. *Hale* ſays in his Hiſtory of the Law is an excellent Comment upon this Place. " This Order of Trial by Evidence, upon the Oath of Witneſſes, in Open Court, in the " Preſence of the Parties, before the *Judge* and *Jury*, where each Party has Liberty of excepting, " either to the Competency of the Evidence, or the Credit of the Witneſſes: The Judge, Jury, " the

[14] *Anal.* 160. 170. *Hiſt.* L. 49. [15] 23 *Hen.* VIII. 3. ſed v. 13 *El.* c. 5. *Wood* C. L. 652. [16] Ib. 562, 3. [17] V. 2 *Inſt.* 561, 2. [18] Ib. 237. [a] M. pl. 34. [b] L. 4. Tr. 5. Capp. 4, 5. fo. 288. b. 292. a. in *Wilk.* Ed. Seld. III. 1895. it is Bract. L. 4. Tr. 1. c. 19. § 2. 185. a. vid. [c] *Wilk.* 243. p. * V. State Tracts I. 523. 528. 532. Matth. Par. 217. 30.

that Way of Proceeding, which the *Civil Laws* preſcribe? No one's Cauſe or Right is, in this Caſe, loſt, either by Death or Failure of Witneſſes. The (k) *Jurors* returned are well known, they are not procured for Hire; They are not of Inferior Condition; neither Strangers, nor People of Uncertain Characters, whoſe Circumſtances or Prejudices may be unknown. The (k) *Witneſſes* or *Jurors* are of the Neighbourhood, able to live of themſelves, of Good Reputation and unexceptionable Characters, not brought before the Court by either of the Parties, but (l) choſen and returned by a proper Officer, a worthy, diſintereſted and indifferent Perſon, and obliged under a Penalty to appear upon the Trial. (k) They are well acquainted with all the Facts, which the Evidences depoſe, and with their ſeveral Characters. (m) What need of more Words? There is nothing omitted which can diſcover the Truth of the Caſe *at Iſſue*, nothing which can in any Reſpect be concealed from, or unknown to a *Jury* who are ſo appointed and returned, I ſay, as far as it is poſſible for the Wit of Man to deviſe.

" the Parties, their Counſel, Attornies, *all* of them have an Opportunity to propound Occaſional " Queſtions, which *bolts* out the Truth much better, than when the Witneſs only delivers a formal " Series of his Knowledge, without being interrogated. The Judge being always preſent, gives " the *Jury* great Aſſiſtance in obſerving where the *Queſtion* lies by Way of Deciſion, and, in " Point of Fact, by Way of Direction." Ib. 256. & ſeqq. *Wilkins* Pref. IX. v. Dr. *Jenkins'* Reaſonableneſs, &c. Chriſtianity. V. 2. p. 176.

(k) *Teſtes,*] In the ſeveral Places marked (k) *Teſtes* muſt indiſputably intend the *Jurors*; and not altogether ſo Improperly, as they are of the Neighbourhood, and may be well acquainted with the Point in Queſtion; and as Matters are often put upon a View of the *Jurors*, in this Reſpect they may be called, *Teſtes*; and that the *Jurors* were anciently called *Teſts*, is evident from Domeſday-Book, where it is often found, *Teſtatur Hundredus, Teſte Hundredâ* — The Hundred witneſſeth that ſuch Land is ſuch a Man's [19]. " Ægelwynnus Aldermannus venit ad E. & tenuit placitum " *cum toto Hundredo:*" And the Witneſſes of Contracts and Purchaſes then were, *Teſtimonio Hundredi* [20]. " Hugo Sturmer tenuit hactenus Ebrige, Herlang tenuit T. R. E. pro Maner. &c. De " hoc Manerio *teſtatur Scira* quod non pertinuit ad Anteceſſorem Hugonis per quem reclamat [21]." Of the *Tryal by Juries* v. *Sir William Temple*, 155. 171. *Hales'* Hiſt. Law. c. XII. and v. pp. 259. 260. *Vaughan's Reports* 148.

(l) *Electi,*] Legally ſummoned and ſerved to appear to try the Cauſe; the *Jurors* are fineable if they do not appear, and the Party ſuffering may bring his Action and recover againſt them. *Compulſi,*] ſubpœna'd, that is, under a Penalty to the King for Abſence, and a Contempt of the Laws. W.

(m) " This excellent Order of Trial by *Jury* has all the Helps to inveſtigate the Truth that the " *Civil Law* has, and many more —— *Jurors* are not bound up to the preciſe Rules of the *Civil* " *Law*; one Witneſs is not rejected, becauſe He is ſingle; not always to believe Two Witneſſes, " if the Probability of the Fact does, upon other Circumſtances, reaſonably encounter them." *Hale* H. L. 260, 1. v. *Pref.* to 3 & 8 *Co. Camd.* Brit. CLXII. CLXIX. *Fort.* Pref. X.

---

[19] *Tyrrell* Bibl. Polit. D. 10. Mr. *Atwood*'s Janus Anglorum, p. 35. *Tyrrell*, II. Int. LXVII. [20] I. Int. LXXXI. [21] II. Int. LXXIV.

CHAP. XXVII.

The Way of Proceeding in Capital Caſes.

IT becomes now abſolutely neceſſary to inquire thoroughly how the Laws of *England* come at the Truth in Caſes Criminal; whereby the Form of Proceedings in both Laws being made appear, We may the better Judge, which Law does moſt effectually

diſcover the Truth. If any (a) ſuſpected Perſon who ſtands accuſed for (b) Felony or Treaſon committed in *England*, denies the Crime of which He ſtands accuſed, before his Judges: The Sheriff of the County where the Fact is committed, ſhall cauſe to come before the ſame Judges *Twenty-four* Good and Lawful Men of the Neighbourhood to the Vill where the Fact was done, who are in no wiſe allied to the Perſon accuſed, who have Lands and Revenues to the Value of an (c) *Hundred Shillings*; and they are to certify to the Judges upon the Truth of the Fact, wherewith the Party is charged. Upon their Appearance in Court, as they come to the Book to be ſworn, before they be ſworn, the Perſon accuſed may *challenge* them, in the ſame Manner as is above deſcribed, and as is uſually done in *real Actions*. Further, in Favour of Life, d(17), He may challenge

(a) *Rettatus,*] Accuſed, Arreſted, it is in the *Stat. de Bigamis* [1]. "Quando de Felonia *rectati* fuerunt"— When ſuch Perſons have been *attainted* for Felons— When they have been *arreigned* for Felony. "Gents *rettes* de Felonie."— Perſons *detected* of Felony [2]. Si Clericus aliquis pro crimine aliquo vel *retto* — If a Clerk for any Crime or *Offence* [3]. *Rettum,*] derived of an old Word, *rette*, or *reatte*, à *reatu*, an Offence or Fault [4]. *Rectatus,*] ſuſpectus *ad rectum* vocatus. Officium Coronatoris edit. an. 3 *Ed.* I— De Theſauro invento debet Coronator inquirere qui fuerint inventores, & ſimiliter quis inde *rectatus* eſt . . . . . Hinc *rectum* pro *accuſatione* [5]. *Du Freſne* has the Words, *Rettare*, *Reptare*, *Rectum*; under this laſt Word You have the ſeveral Meanings and Authorities to explain Our Author. *Rectare*, Reum ad *rectum* faciendum ſubmonere [6]. Chaucer has it.

That Ye ‡ ne *arrette* it nought my Villany— before the Canterbury Tales, at the End of his
[‡ *impute, lay Blame*] (Characters.

In the 49 Law of King *William* in *French*, Chaſcun ſeniour eit ſoun Serjant, * en ſun plege, que ſi nele *rete*, que ait a dreit el Hundred. That is, let every Lord have his Servant in or under his Pledge (that is, to be bound for him) that ſo if he be † *accuſed*, he may be brought to *Right* (i. e. Juſtice) in the *Hundred Court*. * The Word in the French is, *in* but ſhould be *en*. † Latin Verſion *rectatus*. *Tyrrell*, II. Int. LXXIX. *Wilk.* 139. 227. v. poſt ad Cap. LIII. Note g.

(b) *Felony* was anciently the Offence of the Vaſſal againſt his Lord; puniſhable afterwards with the Forfeiture of the Eſtate and Goods of the Perſon offending. *Henry* I. made Theft, the moſt ordinary Felony, puniſhable with Death: Tho' the **Common Law** brought off Felons with their Books; yet ſince many Statutes, taking away Clergy, leave Felony to the Puniſhment of hanging the Body and Forfeiture of Eſtate. *Felony* is the great Brand of every Offence againſt the Peace, Crown and Dignity of Our Sovereign Lord the King— All Treaſon, tho' it be more in the Puniſhment; Yet it has in it, *Felleum Animum*. W. *Felony*, ex vi termini, ſignifies, *quodlibet Crimen* felleo *animo perpetratum* [7]. See the Caſe, *Armſtrong* and *Liſle* [8], for the Learning of **Clergy**, and very diſtinctly in *Hales'* P. C. [9]. By the 5th of the late *Queen*, c. 6. it is enacted, "That if any Perſon convict of ſuch Felony, for which he ought to have the Benefit of **Clergy**, pray the Benefit of that Act, He ſhall not be required to read, but ſhall be puniſhed as a Clerk convict." Hawk. V. 2. c. 33. § 115. v. Somner. v. Felonia. Whitlock, H. p. 86.

(c) C. s.] The *Stat.* de ijs qui ponendi ſunt in Aſſiſis [10], provides, "That no Sheriff, &c. ſhall from henceforth put in any Recognizance of Aſſize, Juries, Inqueſts and Attaints, triable out of the Shires where they be dwelling, any, except He have Lands and Tenements to the yearly Value of C. s. at the leaſt; within the County, none ſhall be impanelled, except He have Lands or Tenements to the yearly Value of XL s. In Cities, Boroughs, and other Market-Towns, it ſhall be done like as hath been accuſtomed in Times paſſed." V. 35 H. VIII. 6. 27 *El.* 6.— v. 2 *Hen.* 5. c. 3. *State Trials*, III. 197. a. v. *Stat.* 11 H. 6. c. 1. 7 H. 7. c. 5. 23 H. 8. c. 13. *State Trials*, ubi ſup. 197. b.

(d) (17) *Calumniare poteſt* 35 *homines.*] Peremptory Challenge is now reduced to XX. by *Stat.* of 22 *Hen.* 8. *cap.* 14. § VI. . . . Seld. made perpetual by the Stat. Hen. VIII. [11] but by a ſubſequent Stat. [12] The Common Law is revived. The Stat. enacts, "That the Trial of Treaſon ſhall be according to the Courſe of the Common Law, ſo that the Priſoner at this Day, in Caſes of High Treaſon, may challenge thirty-five of the Panel peremptorily", and ſo it hath been reſolved in the Caſes of Sir Walter Rawleigh and George Brooks [13]. A Perſon indicted for Treaſon, may challenge 35 peremptorily, without ſhewing any Cauſe; and in Murder and Felony 20, and with Cauſe more:

I

[1] 4 *Ed.* I. Stat. 3. c. 5. 2 *Inſt.* 273, 4. *Keb.* p. 29. [2] Stat. *Marlbridge*, c. 28. *Keb.* 21. [3] Ib. 18. [4] 2 *Inſt.* 150. [5] *Spelm.* ad v. [6] *Du Freſne*, To. 3. p. 597. v. *X Scriptt.* 1410, 37. 1411, 44, 5. *Somn.* ib. ad. v.v. *Addretiare*, *Rectatus*, *Retectus*. [7] 1 *Inſt.* 391. a. [8] *Kelynge*'s Reports by the L. C. J. Holt. [9] Tit. **Clergy**. [10] 21 *Ed.* I. *Keb.* 58. [11] 32 *Hen.* VIII. 3. § VII. [12] 1 & 2 *Ph.* & *Mar.* c. 10. [13] 3 *Inſt.* 156. b.

challenge *Five and thirty*; ſuch as He moſt feareth and ſuſpecteth, who, upon ſuch Challenge ſhall be ſtruck out of the *Panel*, or ſuch Marks ſet over againſt their Names, that (to uſe the *Term* in Law) they ſhall not (e) paſs upon him in Trial; and this *Peremptorily*, without aſſigning any Cauſe for ſuch Challenge; and no Exceptions are to be taken againſt ſuch his Challenge; (f) who then in *England* can be put to Death unjuſtly for any Crime? Since He is allowed ſo many Pleas and Privileges in Favour of Life: None but his Neighbours, Men of Honeſt and good Repute, againſt whom He can have no probable Cauſe of Exception, can find the Perſon accuſed, Guilty. Indeed, one would much rather that Twenty Guilty Perſons ſhould eſcape the Puniſhment of Death, than that One Innocent Perſon ſhould be condemned, and ſuffer *Capitally*. Neither can there be any Room for Suſpicion, that in ſuch a Courſe and Method of Proceeding, a Guilty Perſon can eſcape the Puniſhment due to his Crimes; ſuch a Man's Life and Converſation would be Reſtraint and Terror ſufficient to thoſe who ſhould have

more: But in Treaſon for Compaſſing to kill the King, &c. no Challenge is to be allowed but for Malice. 1 Inſt. 155. v. *Hawkins*, II. c. 43. p. 414. State Trials, III. 135—140—IV. 186, Francia's Trial, A. D. 1717. The Form and Method of Trial of Commoners in Caſes of High Treaſon, 12°. (publiſhed 1709, and diſtributed to the Members of Parliament), pp. 26, 7. 29. 30. State Trials, VI. 670. H. P. C. 260. Readings on the Stat. Tit. Challenge. Jurors. v. State Trials, III. 197.

(e) v. 2 *Inſt.* 45. *Per Legem Terræ.*

(f) Through the Punctuality required by Law in the Trial of Cauſes, there is as much as Art and Conſcience can contrive againſt Corruption, and in Favour of Right, Life and Reputation: If the Subject be not given up to Irreligion and Falſeneſs, if *Juries* be but Knowing, Honeſt and Reſolute, no Injury can be done *Judicially* in *England*, eſpecially where Life is concerned. Whenever Things have been carried with an High Hand, Times of better Temper have reverſed the Judgments, and diſhonoured the Practice. So, in the Caſe of *Thomas* Earl of *Lancaſter* [14] (an. 14 *Ed.* II.) who was not put to Death *per Legem Terræ* [15]. He was declared by Parliament to be unlawfully proceeded againſt. Even Mr. *Eachard* [16] ſays, that He was beheaded the ſame Day He was condemned, without anſwering, or the Judgment of his Peers. The Upſhot of this illegal Proceeding was, that upon the Queen's Return, and Proclamations daily iſſued, "That if the King "would come in and conform himſelf to the Laws, He ſhould be reſtored." But, as ſuch Princes generally do on ſuch Occaſions, he rather choſe to conceal Himſelf, than truſt to this Declaration; or, indeed, rather to loſe his Kingdom and Life than govern by Law. The laſt Century produced more than One Inſtance of the ſame Kind, within theſe Kingdoms. An. 4 *Ed.* III. *Richard de Arundel*, eldeſt Son of the late Earl of *Arundel*, prayeth, that He may be reſtored to Blood, Lands and Goods, conſidering that the ſaid *Edward* was put to Death, being not tried by his Peers, according to the Law and Great Charter. But, for that the ſaid Attainder was confirmed by Parliament, the ſaid *Richard* amendeth his Petition, and prayeth in ſuch wiſe, to be reſtored of the King's mere Grace. He was accordingly reſtored, together with the Caſtle of *Arundel*. Cotton's Abr. [17] Where You may ſee many Attainders in Parliament, reverſed in and by Parliament, and a Reſtitution of Lands and Blood to Perſons attainted of *Treaſon*, or *Felony*, in or out of Parliament, by Act and Judgment of Parliament, and the firſt Attainder pardoned, reverſed and nulled. In the Caſe of *Thomas* Earl of *Strafford*, the Statute declares, that the Attainder was obtained in a tumultuous Manner, and that all Records and Proceedings of Parliament relating thereto be cancelled [18]. The Earl of *Strafford*'s Death made all his former Errors be forgot: It raiſed his Character, and caſt a laſting Odium on that Way of Proceeding; Whereas he had ſunk in his Credit by any Cenſure, lower than Death, and had been little pitied, if not thought juſtly puniſhed. The like Effect followed upon Archbiſhop *Laud*'s Death [19]. King *Hen.* VIII. was bent to make *Empſon* and *Dudley* examples, in order to content the People, who were extremely incenſed againſt them. So, their Condemnation was reſolved upon before they appeared before the Council, though it was not yet well known on what to ground their Trial. In any other Country, People would have been glad to ſee theſe Two Men ſent to the Gallows by an Act of Sovereignty. But the Caſe is different in *England*, where the Greateſt Criminals have Privileges, which they cannot be debarred of, without giving ground to ſuſpect that the Court has a Deſign upon the Liberty of the Nation. *Rapin*, VII. p. 6. Whitlock, H. 194.

---

[14] 3 *Inſt.* 52, 3. *Hol.* p. 339. *Tyrrell*, III. Part 1. 291. The Caſe at large. *Kinnet*, I. 207. *Speed* 571, 2. *Baker* 221. *Aug. Vincent*'s Diſc. Errors, 294. *Ruſhw.* II. 526. *Rapin*, IV. 192.
[15] *Seld.* III. 1937. 1955. *Hale* H. L. 54. [16] I. 331. [17] *Records Tower* 7. 73. 86. & paſſim. [18] 13 & 14 C. II. 29. *Rapin*, XI. 166. [19] *Burnet*'s Hiſt. p. 49.

any

any Inclination to acquit him: In a Proſecution, carried on in this Manner, there is nothing Cruel, nothing Inhumane; an Innocent Perſon cannot ſuffer in Life or Limb: He has no Reaſon to dread the Prejudices or Calumny of his Enemies, He will not, cannot, be put to the Rack, to gratify their Will and Pleaſure. In ſuch a Conſtitution, under ſuch Laws, every Man may live ſafely and ſecurely. Judge then, Good Sir! which Law is rather to be choſen, putting Your ſelf in the private Capacity of a Subject.

CHAP. XXVIII.

The Prince owns his Conviction.

TO whom the Prince—— I ſee no Difficulty at all in the Caſe, my Good Chancellor, to make me heſitate, or waver as to the Choice I am to make; particularly in the Manner You require and propoſe. For, who would not rather live under a Law which renders Life ſecure and happy, than where the Law is found inſufficient for Protection, and leaves a Man defenſeleſs, under a Series of Inſults and Barbarities from One's Enemies? That Man cannot in any wiſe be ſafe either in his Life or Property, whom his Adverſary (in many Caſes which may happen) will have it in his Power to convict out of the Mouth of *Two* Witneſſes, ſuch as are *unknown*, produced in Court and pitch'd upon by the Proſecutor. And, tho' in Conſequence of their Evidence, He be not puniſhed with Death, yet an Acquittal will not leave him in a much better Condition after *the Queſtion* has been put, which cannot but affect the Party with a Contraction of his Sinews and Limbs, attended with Conſtant Diſorders and want of Health. A Man, who lives under ſuch a Government, as you deſcribe, lives expoſed to frequent Hazards of this Sort: Enemies are deſigning and deſperately Wicked. Witneſſes cannot well bring about ſuch a Wicked Device, when, what Evidence they give in, muſt be in open Court, in the Preſence and Hearing of a Jury of Twelve Men, Perſons of Good Character, Neighbours where the Fact was committed, appriſed of the Circumſtances in Queſtion, and well acquainted with the Lives and Converſations of the Witneſſes, eſpecially as they be near Neighbours, and cannot but know whether They be worthy of Credit, or not: It cannot be a Secret to every One of the Jury, what is done by, or amongſt their Neighbours. I know of my ſelf more certainly what is a doing at this Time in *Berry*, where I reſide, than what is a doing in *England*: Neither do I think it poſſible that ſuch Things can well eſcape the Obſervation and Knowledge of an Honeſt Man, as happen ſo near to his Habitation, even tho' tranſacted with ſome Kind of Secrecy. But, ſince theſe Things are ſo, I admire very much, that the Law of *England*, which in this Reſpect is ſo commodious and deſireable, ſhould not obtain all the World over.

CHAP. XXIX.

Why there are not Inqueſt of XII *Men in other Countries.*

Chancellor.] AT the Time Your Highneſs was (a) obliged to quit *England*, You were very Young, conſequently the Natural Diſpoſition and Qualities of Your Native Country cou'd not be known to You; Had the Caſe been otherwiſe, upon a Compariſon of the Advantages and Properties of other Countries with thoſe of Your own, You would not be ſurprized at thoſe Things which now agitate and diſturb You. (b) *England* is a Country ſo fertile, that, comparing it Acre for Acre, it gives Place to no One other Country: It almoſt produces Things ſpontaneous, without Man's Labour or Toil. The (c) Fields, the (d) Plains, Groves, Woodlands, all ſorts of Lands ſpring and proſper there ſo quick, they are ſo luxuriant, that even uncultivated Spots of Land, often bring in more Profit to the Occupant, than thoſe which are manured and tilled; tho' thoſe too are very fruitful in

(a) *Receſſiſti*] This Word imports not a Choice, but a Fate upon the Prince. *Recedere*, q. *retro cedere*, ex acie [1]; to quit the Field. "Qua ratione res ab uſitatâ conſuetudine *recederet* [2]." Nam neq; de Statu nobis noſtræ dignitatis eſt *recedendum* [3]. Ab officio nunquam *recedemus* [4]. *Recedere* a perſonâ. *Cooper*'s Dict.

— ſæpe *receſſit*
Turpiter a *Phœbi* victa ſorore *Venus*. *Ovid.* Remed. Amoris 199.

V. ante Introd. 1. inde *propulſi ſunt*.

(b) Amongſt other its Characters, *England* is Famous for her Laws, which give their Inhabitants a peculiar Privilege from the Injuries of Great Men, and from a Depredation on their Property; the People being no **Villains**, but *Freemen*, the Laws not *Arbitrary*, but *ſettled* and *fixed*, not *alterable* without Conſent of King, Lords and Commons, in *full and free Parliament* aſſembled. As for her Fruitfulneſs, 1. It hath noble Vegetables. 2. Wholſome Fountains, Fruitful Rivers. 3. A benign Influence of the Sun. 4. Abundant Conveniencies of Cattle and other Things for the Uſe of Man. 5. The Pleaſant Landſchape of Woods, Rivers, Springs, Meadows interwoven. 6. Plenty of Healthful Victuals and Fruits, the Climate and Air temperate. W. *Comines*'s [5] Opinion was, "That of all the Countries in *Europe*, where He was ever acquainted, "the Government is no where ſo well manag'd, the People no where leſs obnoxious to Violence "and Oppreſſion, nor their Houſes leſs liable to the Deſolations of War, than in *England*; for "there the Calamities fall only upon the Authors."

(c) Mr. *Waterhouſe* has it that Our Law-Language calls open Common Fields *Agri*. Thus in **Deeds** and **Conveyances** Arable Lands in the Fields is underſtood for the Common Fields.

(d) *Saltus*] A Lawn in a Park or Foreſt, wherein Beaſts of Venery and Chaſe do ſhade and repoſe themſelves. Thus *Ovid*,

— apti *Saltus* Venatoribus. —

Saltus, ut *Varroni* placet, pars eſt Sylvarum vacua & expedita ab arboribus, ubi Pecudes liberè paſcant & *exiliant*, ita

Saltibus in vacuis paſcant. *Virg.* G. III. 143.

Saltus Veteres nominârunt ab uſu agros, quos non colebant propter Sylvas, aut id genus, ubi Pecus poſſit paſci & poſſidebant. Græci, τὰ ἄλσεα καὶ νομὰς. Noſtri nemora [6]. *Saltus* eſt ubi Sylvæ, & paſtiones ſunt, quarum cauſâ cæſæ quoque. Si qua particula in eo *Saltu* paſtorum, aut cuſtodum cauſa aratur, non peremit nomen *Saltui*, non magis quam fundi, qui eſt in agro culto, & ejus cauſa habet ædificium, ſi qua particula in ea habet Sylvam [7].

In *Saltus* utrumq; gregem, atq; in paſcua mittes. *Virg.* G. IV. 324. *Pitiſc.* v. *Calvin.* Lex Jurid. ad v. Saltus, nemora, Sylvas, Poeta conjungit, ut videre eſt, *Virg.* Ecl. X. 57. — G. I. 140. Ecl. VI. 57. G. II. 471. Æn. IV. 121. *Erythræus.*

---

[1] *Cæſ.* [2] *Cic.* Orat. pro P. *Quinctio.* XXI. [3] Epiſt. ad *Att.* L. 1. Ep. ult. [4] De *Offic.* L. 3. Ed. *Verb.* pars 4ta. p. 1312. [5] Ib. p. 509. [6] *Varr.* de Ling. Lat. IV. 4. *Feſtus. Pitiſcus.* [7] *Gallus*, L. 2. ſignificat. quæ ad jus pertinent.

plentiful Crops of (e) Corn. The Feeding-Lands are likewiſe encloſed with Hedge-rows and Ditches, planted with Trees, which fence the Herds and Flocks from bleak Winds, and ſultry Heats, and are for the moſt part ſo well watered, that they don't want the Attendance of the (f) **Hind**, either Day or Night. There are neither (g) *Wolves*, Bears, nor Lions in *England*; the Sheep lie out a Nights without their Shepherds, pen'd up in (h) Folds, and the Lands are improving at the ſame Time: Whence it comes to paſs, that the Inhabitants are ſeldom fatigued with hard Labour, they lead a Life more ſpiritual and refined: So did the *Patriarchs* of old, who choſe rather to keep Flocks and Herds, than to diſturb their Peace of Mind with the more laborious Employments of Tillage and the like: From hence it is, that the (i) Common People of *England* are better inclined and qualified to diſcern into ſuch Cauſes, which require a nice Examination, than thoſe who dwell upon their Farms, and are conſtantly employed in Husbandry-Affairs, whereby they contract a Ruſticity of Underſtanding. *England* is ſo thick-ſpread and filled with Rich and Landed Men, that there is ſcarce a ſmall Village in which you may not find a *Knight*, an (k) *Eſquire*, or ſome ſubſtantial (l) Houſholder, commonly called, a (m) **Franklyne**; *all* Men of

(e) *Bladum*] A Synonymous Word for *Seges*. It is taken for all Grain which is makeable into Bread. W. *Bladum*] Corn on the Ground in the Blade [8]. The Blade grows up into a Stalk, which bears an Ear that contains many Grains of Corn; ab A. S. Blæd. Fruges, Frumentum [9]. *Bladum*] "Vocabulum à *Saxonibus* acceptum, ac Semen, vel Segetem deſignat; "ſæpe & fructum, etiam arborum ac Vitium; præcipue tamen frumentum notat, ac quicquid in "area teritur [10]. The Earth bringeth forth Fruit of herſelf, firſt the *Blade*, then the Ear, "after that the full Corn in the Ear. St. *Mark* IV. 28.

(f) **Hind**] An *Anglo-Saxon* Word, ſignifying one of the Family. A Servant eſpecially for Huſbandry, a Huſbandman. In ſome Parts of *England* He is called **Bailiff**. *Bailey's* Dict. v. *Skinner's* Et. Gen. & Et. Voc. Forenſ. & *Cowell* ad. v.v. *Bailiff* & *Hind*. *Sadler* 177.

(g) Wolves were formerly frequent in *England*, or rather in *N. Wales*, where King *Edgar* [11] is ſaid to lay on the *Welſh* a yearly Tribute of three Hundred Wolves: It continued for three Years, and in the fourth Year there was not a Wolf to be found [12]. Mr. *Selden* [13] ſays, "It "was not an utter Deſtruction of them;" and quotes Itin. *Leiceſt*. 27 *Hen*. III. in Archiv. Turr. Lond. The Manor of *Piddleſley* in *Leiceſterſhire* was held by one *Henry* of *Angage*, per Serjeantiam *capiendi Lupos*, as the Inquiſition delivers it. v. *Camerarius*, L. 2. c. 8. *Camd. Brit.* Tit. *Merionydſhire*. W. *Malmesb*. Ed. *Savil*. 59, 10. *Heylin* 298. *Madox*, Dial. de Scaccario 42. (66.) IV. p. 516.

(h) *Caulas*] i. e. Munimenta & ſepta Ovium: eſt enim Græcum nomen, c. detracto: Græci Αὐλὰς vocant animalium receptacula. *Servius* ad Æn. IX. 60.

(i) That is, they are endued with Judgment, which reſults from the Liberty of their Laws, and the Freedom of their Minds. *Apti & diſpoſiti*] "*Aptus* eſt qui convenienter alicui rei junctus eſt. *Cic.* ad rerum dignitatem *aptè* & quaſi decorè [14]. Qui nam dicendi eſt modus melior, quam ut Latine, ut plane, ut ornate, ut ad id, quodcunq; agetur, *apte*, congruenterq; dicamus [15]? Dicta — *apta* & inter ſe cohærentia [16]. Diſpoſita in omnem Fortunam Conſilia. *Livy*.

(k) *Eſquire*, Eſcuyer. *Armiger*. One of the Second Degree of the Minor Nobility; One who has properly a Right to bear a Coat of Arms on his Shield. Every *Eſcuyer*, in *France*, is a Gentleman, and none is there eſteemed a Gentleman who has not a Right to a Coat of Arms. W. *Fort*. 21. *Seld*. III. 848. XLVII. *Cowell* ad v. plura. *Wood* C. L. 44. 2 *Inſt*. 596, 667. v. *Hickes*, d. e. 29. *Camd*. CLXXXIV.

(l) *Paterfamilias*] Imports one, "Qui ſui juris, nulliq; addictus mancipio:" called the Father of the Family, "non quod Familiam, ſed jus familiæ habet," as the Lawyers ſay. W. *Calvin*. *Pitiſcus*.

(m) **Franclaine**] A Freeman or Gentleman, *Libertus*. *Libertinus*. *Municeps*. *Franchilanus*.

1 *Libere*

[8] Syll. Voce. Forenſ. [9] *Skinner*. *Boyer*, Dict. *Cowell*. *Spelm*. *Du Freſne*, Gl. & Et. Vocabb. Ling. *Galliceæ*, To. 3. p. 1682. [10] *Somner*. *Hickes*, g. f. p. 93. col. 1. Lin. 25. [11] *Rapin*, I. 392. [12] Mr. W. quotes *Vowell's*, alias *Hooker's* Deſcr. *England*, p. 225. v. *Baker* 12. *A. Tyrrell*, I. B. 6. p. 4. *Speed* 387. [13] III. 1797. [14] *Cic.* de Orat. *Cockman*, L. 1. 32. [15] Ib. L. 3, 10, 14. p. 231. [16] *Cic.* de Nat. Deor. *Davis*, p. 246.

of conſiderable Eſtates: There are others who are called (n) *Freeholders*, and many (o) **Yeomen** of Eſtates ſufficient to make a ſubſtantial Jury, within the Deſcription before obſerved. There are ſeveral of thoſe **Yeomen** in *England* who are able to diſpend by

Libere Tenens, cui opponitur *Villanus*. * "*Thomas Brotherton* (filius *Edwardi* I.) apres Le "mort ſon pere eſpoſa La Fille de un *Franclein*, appellee *Alice* [17]."

A Frankelein there was in his Companie:
White was his Berd, as is the Daiſie,
To liven in delite was ever his wonne,
For he was *Epicures* owne Sonne,
An Houſholder, and that a great was he,
Saint *Julian* he was in his Countre:
His Bread, his Ale, was always after one,
A better veinded Man was no where none.
Without bake Meat, was never his Houſe,
Of Fiſh and Fleſh, and that ſo plenteouſe
It ſnewed in his Houſe of Meat and Drinke,
Of all Deintes that Men cou'd of thinke:
After the ſondre Seaſons of the Yere,
So chaunged he his Meate and his Suppere,
Full many a fatte Partriche had he in mew,
And many a Breme, and many a † Luce in ſtew
His Table dormaunt in his Hall alway,
Stode ready covered all the long Day.
At Ceſſions there was he Lord and Sire,
Full ofte time he was *Knight* of the Shire.
A *Sherife* had he been, and a *Countour* [18],
Was no where ſuch a worthy *Vauefour* [19]. *Chaucer*'s Prologues X.

† A Pike, or Jack.

(n) *Libere Tenentes*] Freeholders. Mr. *Waterhouſe* judges them to be **free Soccagers**, who pay a ſmall Quit-Rent; and perhaps a Fine upon every Alienation. **Barons**, from whom the **Court Baron** is denominated: a Tenure very eſtimable in Law, and of long ſtanding: without them, in ſome Caſes, the Lord cannot diſpoſe of Matters in his Manor; as *Incloſure* of Commons, *Diviſion* of Waſtes, &c. *Spelman* [20] obſerves, that *Barons* did formerly ſignify them, whom we now call *Freeholders*, that, at this Day, they are the Judges in the **Court Baron**. — that there are Deeds of *Hen.* II. directed, "Omnibus *Baronibus* & *Fidelibus* ſuis, where it is to "be noted, that the Word (*ſuis*) is not to be referr'd to *Baronibus*, but only to *Fidelibus*. *Dug*"*dale* [21] has it of King *Hen.* I. it is certain that, *per Commune Concilium Baronum*, He was "crowned, which Words, according to Mr. *Lambard* [22], do ſignify the Commonalty, as well "as the Nobles. The *Germans* render the Word *Baro*, by **Frehere**, i. e. a Freeman, whence "the Courts in every Manor are termed *Courts-Baron*, tho' the Lords of them are of no higher "Degree than Gentlemen." Mr. *Petyt* [23] has a Diſcourſe, wherein He obſerves upon the various Acceptation of the Word *Baro*, and that under the Phraſe of *Baronagium Angliæ*, both Lords and Commons were comprehended. v. *Somn.* ad v. *Francus Tenens. Hickes*, g. a. 146. *Gerv. Tilbury* (Madox) 54. (p.p.) St. *Amand* 110. *Aquinas* 289. *Tyrrel*, I. Introd. LXXXII. *Spelm.* Reliq. 51. v. *Atkins*, P. p. 30, 31. *Whitl.* M. 344.

(o) *Valecti*] **Yeomen.** Mr. *Selden* [24] ſays, *Valet*, or *Vadlet*, was anciently with us, as in *France*, a Name ſpecially denoting Young Gentlemen, tho' it be now, both with us and them, given to thoſe of the Rank of **Yeomen** [25]. "Sir *Thomas Smith* [26] defines a **Yeoman** to "be a free-born *Engliſhman*, who may lay out of his own Freeland, in yearly Revenue, to the "Sum of *Forty Shillings* Sterling. — It cannot be thought that **Yeoman** ſhould be a *Young* "*Man*; for, commonly, we do not call any a **Yeoman** till He be married, and have Children, "and, as it were, have ſome Authority among his Neighbours: A Man well at Eaſe and having "honeſtly to live, and yet not a Gentleman." "*Valectus* non omnino eâdem notione apud "*Anglos*, qua olim & apud *Gallos*. **Yeoman**, *Gallis*, Valeti [27]. Volo, quod *Armigeri* mei cum "*valectis*, & omnes, qui cum ipſis in Servitio meo exiſtunt [28]." *Valecta*] **Yeoman**, *Fundorum Redemptor. Colonus, Inquilinus* [29]. *Skinner*, amongſt other his Derivations of the Word [**Yeoman**] has the *Engliſh* Word **Goodman**; quo nomine etiamnum infimos Plebeios appellamus. The Squire's **Yeoman** in *Chaucer* [30] ſeems to intend ſome other Character than is before deſcribed. v. *Somn.* ad v. *Spelm.* Reliq. Pt. 2. 243. *Wood* C. L. p. 45. 2 *Inſt.* 668. 1 *Inſt.* §. 464. *Seld.* II. 1014.

---

* *Spelm.* Reliq. 167. *Brooke*'s Cat. &c. 240. *Vincent*'s Diſc. Errors 342.
[17] *Du Freſne* ad v. *Franchilanus. Spelm. Skinner.*
[18] *Seld.* III. 1027.
[19] Ib. paſſim.
[20] *Reliq.* Pt. 2. 237.
[21] *Orig. Jurid.* 16. b.
[22] *Archæon.* p. 261. *Wilkin*'s Gl.
[23] *Rts. Com.* p. 108.
[24] III. 849.
[25] — Ib. 27, 8.
[26] L. 1. c. 23.
[27] *Du Freſne* ad v.
[28] *Aſſer. Menev.* int. *Camb.* Angl. &c. 24. l. 12.
[29] *Spelm.*
[30] *Prol.* III.

by the Year a (p) *Hundred Pounds*, and more: *Juries* are very often made up of ſuch, and, in Cauſes of Conſequence, they conſiſt of *Knights*, *Eſquires*, and others, whoſe particular Eſtates, in the whole, amount to upwards of *Three Hundred Pounds* a Year. Wherefore 'tis not to be imagined that Perſons, in ſuch wealthy Circumſtances, can be ſuborned or prevailed on to perjure themſelves; they are ſuppoſed to be reſtrained, not only thro' a Religious Principle, but alſo as they Regard their Honour and Reputation, as they would avoid the very great Scandal and Detriment which muſt accrue by ſuch a Behaviour; and further, leaſt the Infamy ſhould extend to and affect their Heirs. Other Countries, *My Prince*, are not in ſuch an happy Situation, are not ſo well ſtored with Inhabitants. Tho' there be in other Parts of the World, Perſons of Rank and Diſtinction, Men of great Eſtates and Poſſeſſions, yet they are not ſo frequent, and ſo near ſituated one to another, as in *England*; There is no where elſe ſo great a Number of Land-Owners: In a whole Town, in any other Country, you can ſcarce find a Man of Sufficiency enough to be put upon a *Jury*: For, except in large Cities and walled Towns, there are very few, beſides the Nobility, who are Poſſeſſors of Eſtates, or immoveable Goods, to any conſiderable Value. The Nobility do not keep in their Hands any great Scope of feeding Lands; it does not comport with their Rank and Quality to cultivate Vineyards, or put their Hands to the Plough: And yet the Main of their Poſſeſſions conſiſts in Vineyards and Arable Lands, except ſome Meadow Grounds, which lie along the great Rivers, and the Woodlands; the Paſture of which is in common to their Tenants and Neighbours. How can it then be, that in ſuch Countries a *Jury* can be made up of *Twelve Honeſt Men of the Neighbourhood*, near where any Fact in Queſtion is brought on to Trial; ſeeing they can't be well called *of the Neighbourhood*, who live at any remote Diſtances? It will be very difficult to make up a *Jury* of XII Men, tho' remote from the Place where the Fact in Queſtion lies, after that the Party accuſed ſhall have challenged his Thirty-five peremptorily, who lived neareſt to the Place: Wherefore in thoſe Countries they muſt make up a *Jury*, either of Perſons living at great Diſtances from the Place where the Fact was committed; Perſons wholly unacquainted with the Parties and their Circumſtances; or the *Jury* muſt conſiſt of People of inferior Rank, who have no proper Notion either of Shame or Infamy, who have no Eſtates

(p) *Scuta*] Skutes; a *French Coin* of Gold, coined 1427. of the Value III. s. IV. d. *Speed* calls them Crowns of Gold. *Truſſel* Skutes of Gold [31]. Mr. W. differs from this Computation; He calls them *French* Crowns, of which there are three Sorts, *Eſcu Sol*, the beſt Crown now made, having a Star on one ſide. *Eſcu coronne*, the next leſs by one *Sols* than the former. *Eſcu veil*, the old Crown, worth 7 s. 2 d. Sterling. He takes our A. to mean the former Crowns, and ſo, Six Hundred Yearly, valuing a Crown at 4 s. 6 d. comes to about 130 *l. Engliſh* a Year; which, at that Time, when Silver was XX. d. the Ounce, comes to almoſt 400 *l.* a Year now [32], computing a *Skute* but in III. s. IV. d. the Sum aggregate is juſt One Hundred Pounds. — So Two Thouſand Skutes reduced amount to 333 l. 6 s. 8 d. or 500 Marks. *Scutum*] Moneta *Francorum*, ita appellata, quòd in ea deſcripta eſſent *Franciæ* Inſignia in Scuto [33]. Et fecit redemptionem pro ſe & ſuis de III. mille Scutis auri. *Knyghton.* X. Scriptt. 2603. v. *Du Freſne* ad v. Moneta II. p. 701. *Spelm.* Reliq. Pt. 1. 157, 8. poſt Cap. XLIX. Note b. *Tyrrell*, III. Int. 6. *Tindal* ad Rapin, VII. 417.

[31] *Chron. Pretioſum* 23. *Fort.* 21. [32] W. 527. K. Ed. Journal, p. 10.
[33] *Du Freſne* ad v.

or Characters to loſe; ſo prejudiced and uncapable in Point of Education, as not to be able clearly to diſcern on which Side the Truth lies. Theſe Things conſidered, You may ceaſe, *My Prince*, Your Surprize, why that Law, by Means of which in *England* the Truth is enquired into, is not in common to other Countries, becauſe other Parts of the World can't furniſh *Juries* of ſo great Sufficiency, or equally Qualified.

CHAP. XXX.

The Prince commends the Way of Proceeding by Juries.

Prince.] THO' We have already agreed in it, that "*Compariſons be odious*;" yet the *Civil Law*, as You have made out the Compariſon, and ſet forth the Reaſons, is delivered from all Imputation of Blame or Defect: For, altho' You have preferr'd the Laws of *England* to it, yet the Defect is not in the Law it ſelf; neither the *Civil Law*, nor the firſt Legiſlators ſtand impeached: You have only demonſtrated that the Country, where it prevails, is the Occaſion of it; by means of which it does not ſo effectually get at the Truth, in dubious Caſes, as the Laws of *England* do; that the Law of *England*, in the Caſe juſt now diſcuſt by You, is better accommodated for *England* than the *Civil Law*, is out of Diſpute; and We can't have the leaſt Inclination to introduce the *Civil Law* inſtead of it: But this ſuperior Excellence of the Law of *England* does not happen thro' any blameable Defect in the *other Law*; But, as You ſay, the Wealth and Populouſneſs of the Country are in the Cauſe.

CHAP. XXXI.

Whether the Proceedings by a Jury be repugnant to the Law of GOD.

BUT, *My Good Chancellor*, tho' the Method whereby the Laws of *England* ſift out the Truth, in Matters which are at Iſſue, highly pleaſes me; yet there reſts one Doubt with me, whether it be not repugnant to Scripture, *Our Bleſſed Saviour* ſays to the *Phariſees* [St. *John* VIII. 17.] "It is written in Your Law that "the Teſtimony of Two Men is true." And, in Confirmation, He ſubjoins in the very next Verſe, "I am one that bear Witneſs "of my ſelf, and the Father that ſent me beareth Witneſs of "me." The *Phariſees* were *Jews*; wherefore it is the ſame thing to ſay, "It is written in Your Law," as to ſay, "It is written in "the Law of *Moſes*," which was no other than the Law of GOD, given by *Moſes* to the Children of *Iſrael*; Wherefore to contradict this Law of *Moſes*, is, in Effect, the ſame as to contradict the Law of GOD; from whence it follows, that the Law of *England* deviates from this Law of GOD, which it does not ſeem lawful

in any wiſe to impugn. It is written alſo [*Matth.* XVIII. 16.] That *Our Saviour*, ſpeaking of Offences, and forgiving one another, amongſt other Things, delivers himſelf thus, " If thy Bro-" ther will not hear thee, then take with thee one or two more, " that, in the Mouth of Two or three Witneſſes, every Word may be eſtabliſhed". Now, if in the Mouth of Two or Three Witneſſes, GOD will eſtabliſh every Word; why do We look for the Truth in dubious Caſes, from the Evidence of more than Two or Three Witheſſes. No One can lay better or other Foundation, than *Our Lord* hath laid. This is what, in ſome Meaſure, makes me heſitate concerning the Proceedings according to the Laws of *England*, in Matters of Proof, wherefore, I deſire Your Anſwer to this Objection.

CHAP. XXXII.

The Chancellor's Anſwer.

Chancellor.] THE Laws of *England*, Sir! do not contradict theſe Paſſages of Scripture, for which You ſeem to be ſo concerned; tho' they purſue a (a) Method ſomewhat different in coming at, and diſcovering the Truth: (b) How does that Law of a *General Council* prejudice or condemn the Teſtimony of Two Witneſſes, whereby it is provided, that the *Cardinals* ſhall not be convicted of any Crime, unleſs upon the Depoſition of Twelve Witneſſes? If the Teſtimony of Two be true, *à fortiori* the Teſtimony of Twelve ought rather to be preſumed to be ſo. The Rule of Law ſays, " the more always contains in it that

(a) There is nothing peremptorily to be collected from ſecond Cauſes, ſuch as were, Trial by *Ordeal* of *Fire* and *Water* [1], *Duel*, *Combat*, &c. [2] (The *French* and *Glanvil* [3] call all Trials by Battail, *Leges apparentes*, alias *apparibiles*, vulgarly *Loix Appariſans*) " per Duellum ſolet Placitum " terminari." [4] This was antiquated in * *Hen.* II.'s Time; when *Glanvil*, treating of the Great Aſſiſe, brought in Place of it, ſays, " ex Æquitate maximâ prodita eſt legalis iſta Inſtitutio. Jus " enim, quod poſt multas & longas Dilatones vix evincitur per Duellum; per Beneficium iſtius " Conſtitutionis, commodius & acceleratius expeditur" [5], and ſo more certain Juſtice was to be had than formerly. W. v. *Dugd.* cap. XXVI. & ſeqq. *Temple* 242. *Hale* 153. *Tyrrell*, I. Introd. CXXIII. v. *Hickes*, d. e. 149.

(b) *Leo.* IV. made a Decree, that a Biſhop ſhould not be condemned but by the Teſtimony of 72 Witneſſes [6]. In the ſecond Council of *Rome*, under *Sylveſter* II. it was decreed, that a *Presbyter Cardinal* was not to be condemned of a Crime under forty-four Witneſſes, a *Deacon Cardinal* under thirty-ſix, and *Summus Præſul*, that is, *a Cardinal*, not under ſeventy-two Witneſſes. The Deſign of which Canon was, undoubtedly, to make the Proof againſt a *Cardinal* next Door to impoſſible. " Non dampnetur *Præſul* niſi in LXXII teſtibus, neque *Præſul Summus* a quoquam judicetur. *Pref-* " *byter Cardinalis* niſi in XLIV teſtibus non dampnabitur, *Diaconus Cardinalis* niſi in XXVI, " *Sub-diaconus* & infra niſi in VII. *Apoſtolus* inquit, adverſus *Presbyterum* inſcriptionem non reci- " piendam abſque duobus vel tribus idoneis teſtibus, quanto magis de *Epiſcopis*, ſi hæc de *Presbyteris* " vel cæteris fidelibus ſunt obſervanda [7]?" *Du Freſne* is very particular in deſcribing the Office and Dignity of a Cardinal, and refers the Curious to *Onufrius Panvinius*, *Ciacconius*, *Hieronymus Plau-tus* de *Cardinalis* Dignitate & Officio, *Duarenus*, *Friſon* in *Galliâ Purpurata*, *Joſias Arndius*, Lex Antiq. Eccl. *Spelmman* has a long Diatribe on the ſame Subject. v. Fa. *Paul* of Beneficiary Matters. Eng. p. 15, 16. Cat. Cott. Lib. p. 3. III. 2. † v. L'Enfant Hiſt. Conc. Piſa, p. 197.

---

[1] *Dugd.* cap. XXIX. *Kennet*, I. 97, 108. [2] *Wilkins.* d. e. XII, XIII. *Hawk.* V. 2. p. 426. *Wilk.* 218. Note l. [3] Lib. 4. c. 1. Lib. 14. c. 1, 2. *Spelm.* Rel. 80, 1. [4] *Glanvil*, L. 14. c. 1. 113. b.— * *Madox* Hiſt. Excheq. 23. [5] L. 2. c. 7. 17. a. [6] *Gavin.* Maſter Key of Popery, V. 2. p. 33. [7] In Ll. *Hen.* I. *Wilk.* 237. b. v. ib. Note q. plura. † V. *Stillingfleet* of the H. Com. Court and Diſpenſing Power. Fo. *Lond.* 1689. pp. 65—p. 50.

" which is leſs." So, the Repayment of whatſoever the Hoſt ſpent more than the Two Pence, towards the taking Care of the Man who fell amongſt Thieves, was promiſed to be paid punctually to him by the (c) *Good Samaritan*, when He came again. Shall not an impeached Perſon, who endeavours to prove Himſelf to have been in another Place at the Time of the Fact alleged and committed, be obliged to produce more than Two or Three Witneſſes, when the Proſecutor has proved, or is ready to prove the Charge by as many. So that Perſon, who takes upon Him to convict any Number of Witneſſes of Perjury, muſt of Neceſſity produce a greater Number of Witneſſes againſt them; ſo that the Teſtimony of only Two or Three Witneſſes ſhall not, in all Caſes, be preſumed to be true. But, the Meaning of the Law is this, that a leſs Number than Two Witneſſes ſhall not be admitted as ſufficient to decide the Truth in doubtful Caſes. And this appears from (d) *Bernard*, [Extra. de teſti. ca. licet in gloſſa ordinaria] Where He puts many Caſes, in which, by the Laws, more than Three Witneſſes are required; in ſome Caſes, *Five*, in others, *Seven*. And, that the Truth in ſome Caſes may be proved by Two Witneſſes only, when there is no other Way of diſcovering it, is what the Laws of *England* likewiſe affirm. As, where Facts are committed upon the e (18), *High Sea*, without the Body of any County, which may be after-

(c) See the Hiſtory of the *Good Samaritan*, St. *Luke* X. 30—38.

(d) " *Bernardus* Presbyter, Compoſtellanus. J. C. vix. an. 1250. v. *Simler. Miræum.* p. 302.—" *Bernardus Dorna*, Natione Provincialis, J. C. *Azonis* Auditor," vix. an. 1240. *Du Freſne*'s Index.

e (18) *Si quæ ſupra altum mare, &c. coram Admirallo,*] As then, ſo now, the Admiralty hath Juriſdiction of Things done upon the main Sea. And what that Court might or may do, is ſhewed and limited by the Statutes of 13 *Rich.* 2. *cap.* 5. and 15 *Rich.* 2. *cap.* 3. and 2 *Hen.* 5. *cap.* 6. The firſt Caſe in our Law extant touching Marine Juriſdiction is in *Temp. Ed.* 1. *Tit.* **Avowry** 192. in a *Replevin* brought of a Ship upon the Coaſt of *Scarborough*, where no mention is of the Admiral's Authority, as the Print is in the Abridgment, but Coniſans of it is allowed to the Common Law. Yet in my MS. Report of 25 *Ed.* 1. *fol.* 82. *b.* the Caſe is thus more at large, and expreſly ſpeaks of the Admiral. *William Crake* de *Holtham* **fuit ſommon a reſpondre a** *Robert de Beuſo* **de play pur que il avoit prís une ſune neef prís de** XL. l. **en la mer juſte la coſtere de** *Scardburn* **& de Pleke le amena a** *Holtham* **en le County de** *Norff. Mutford.* **Del hore qu'il avute Conte de une prîſe fete en la mer que eſt hors del conte iſſi que ſi pais ſe joyn fiſts il ne ſabereint a quel viſcont mander pur fere bener pays e Demand Judgment ſi ceyns puſſont de ceo conuſter.** *Ed' autre part*, **il ly ſont aſſigne Admirall de par le Roy ſur la mer a oyer & terminer les pleynts de choſe fait in mer, e nentendons point que vous volys a eux tolyr juriſdiction, &c.** *Bery.* **Nous avons poer general pur my tut Engleterre, mes del poer des Admirals dont vous parles ne ſavons rien, ne rien de noſtre poer a eux volomus aſſigner, ſi ceo ne ſeiſt per commandment le Roy de quey vous ne monſtres rien, &c.** *Mutf.* **Sire le luy on ils dient la neef eſte prís neſt in nul viſnee de que, &c.** *Haward.* **il eſt iſſint viſne que ſi une home occiſt un auter la il ſerra prís & a meſn al terre e pende auſſi ben come pur fet fet ſur la terre.** *Metingham.* **Nous vous dions que nous avons auſſi ben poer de coniſans de fet fet en mer come ſur terre, dont agard que vous reſpondes ouſter.** Unleſs they meant there, that the Viſne might be out of the adjoining County, as in old Trials of Iſſues in Wales, I conceive not their Diſallowance of the Exception againſt the Place, whence properly no Viſne could be. For ſuch Trials of Iſſues riſing in Wales, or in Counties Palatine by the adjoining Counties, ſee eſpecially 18 *Ed.* 2. *tit.* **Aſſiſe** 382. 24 *Ed.* 3. *fol.* 33. *b.* 30 *Hen.* 6. *fol.* 6. *b.* 35 *Hen.* 6. *fol.* 30. *a.* 45 *Ed.* 3. *tit.* **Viſne** 50. I have tranſcribed the Caſe according to the very Letters of my Copy. It ſeems by this that in thoſe Times the Common Law had Coniſans of Things done upon the Britiſh Sea, however it afterward kept its Limits *infra Corpus Comitatus*, leaving the Sea to the Admiralty. Some Caſes in old Records juſtify it alſo. *In Placit.* 37 & 38 *Hen.* 3. *Rot.* 10. *Devon.* One *Galfredus de Leyſina* brings *Treſpas* againſt *Ralf de Valle torta*, and others, *quare aſportaverunt bona quæ fuerunt in navi quæ fuit* Clementis *de* Bolan *quæ nuper periclitabatur in Coſtera de* Brikeſham *quæ bona dominus Rex dedit prædicto Galfredo tanquam wreccum maris, &c.* The Defendants plead in effect, the general Iſſue, *& ſic ad patriam.* Although, through Want of Form in the Declaration it appears not whether the Goods were taken being in or out of the Sea, yet it ſeems they held that Matter indifferent. So in *Itin. Suſſex apud Ciceſtriam* 47 *H.* 3. *Rot.* 10. A Fragment of a torn Roll left in the Bundle, hath

afterwards brought to Trial before the *Admiralty-Court*; Facts of this Kind, by the Conſtitution of *England*, are to be proved by

hath this Sign of a Declaration remaining. *Rogerus de Louere & Radulphus de Louere queruntur de* Richardo *de* Hatfeuld . . . . . *proxima ante feſtum Sancti Martini hoc anno ſe credebant ſalvo* . . . . . *ibidem fregerunt navem ſuam ſuper quendam locum* . . . . . *navis & Socii ſui circiter quinque ſubmerſerunt.* Theſe Words are only left upon the 9. Roll, the Reſt being by ſome wicked Hand purpoſely, it ſeems, torn off. But it is eaſily conjectured that this was an Action on the Caſe, brought by One that had committed himſelf or his Goods to the Defendant's Care for his Paſſage, with his Company, over Sea, and that the Offence was, that the Defendant had by Negligence made Shipwrack on the Sea, or ſome ſuch like; and though the *Aſſumpſit* at Land might make ſuch an Action at this Day, maintainable at Common Law, according to the Learning in *Dowdale*'s Caſe, *Rep.* 6. *fol.* 47. Yet in thoſe Times ſo ancient, I cannot imagin the Difference of a Contract at Land from one at Sea was thought on. Likewiſe in *Trin.* 50 *Hen.* 3. *apud Weſtm. in Banco, Rot.* 22. the Entrie is, *Suff. Abbas Weſtmonaſterij per atturnatum ſuum obtulit ſe quarto die verſus* Petrum *filium* Johannis Richardum *fratrem ejus,* Walterum Cheney, Auguſtinum *filium Jocei,* Johannem *fratrem ejus,* Richardum Andred, Anthonium Clunch, & Richardum Silkento *de placito cum homines ipſius Abbatis nuper duci feciſſent quandam navem ſuam per Coſteram maris prope* Dunwicum, *bonis & catallis ipſius Abbatis & hominum ſuorum cariatum, ijdem* Petrus & *alij ſimul cum Auguſtino filio Johannis navem prædictam cum bonis & catallis prædictis ab hominibus ſuis prædictis abſtulerunt, & navem & bona & catalla ſic Ablata detinent ad damnum ipſius Abbatis & hominum ſuorum ſexaginta librarum & contra pacem, &c.* Unleſs here the Ship were taken upon the Sea *ſuper Coſteram maris,* I underſtand it not. But touching their Trialls in the Admiralty, in ſom Hands is extant a MS. **de l'Office del Admiralty,** tranſlated into Latin by One *Thomas Rowghton,* calling it *De Officio Admiralitatis* (the Uſe of two Copies of it, with the Roll of *Oleron,* written all about *Hen.* 6. was communicated to me by that Learned and truly ſufficient Sir *Walter Raleigh* Knight) where Enditements and Trialls are ſuppoſed to be by a Jury of XII. as at Common Law. But the Book it ſelf is rather a Monument of Antiquity (yet not above about *Hen.* 6.) then of Autority, and rather as a Purpoſe of what was in ſome failing Project, then ever in Uſe and Judgment held authentical. Moſt of it is againſt both the now receiv'd and former Practice. Yet theſe Things hath it worth Obſervation, that is, Conſtitutions often mentioned touching the Admiralty of *Hen.* I. *Richard* I. King *John* and *Edward* I. which are elſewhere hardly found. In *Rot. Pat.* 23 *Ed.* I. *William Leyburn* is Admirall, and often mention is after that of the Admiralls of the North and South Seas, the Diſtinction being the *Thames* Mouth, as *Trent* was wont to be for the General Eſcheatorſhip, and is for the Juſticeſhip of the Foreſts. The firſt Mention of the *Admirall* in Our printed Law, is in 8 *Ed.* 2. *Itin. Canc. tit.* **Cozone** 399. with that ſee [a] 40 *Ed.* 3. *fol.* 44. 40. *Aſſiſ. pl.* 25. *Stamford cap.* **des Cozoners,** Sir *Henry Conſtable's Caſe in Rep.* 5. *fol.* 107. & *Hill.* 2. *Jacob Philipps Caſe in Com. Banco,* and 19 *Hen.* 6. *fol.* 7. *a.* and note that in 7 *Rich.* 2. *Statham, tit.* **Treſpas** 54. a Juſtification is in Treſpaſs in theſe Words, **nous les piſcomous en le haut mere obeſq; les** Normans **queux ſont enemies le Roy, judgment ſi action,** and held good. If this Iſſue offer'd riſing wholly on the main Sea, might not be tried at the Common Law, how could it be good? Either a Traverſe muſt have been to the Taking in the Count, or elſe the Replication muſt have made the Iſſue upon two Affirmatives (which is againſt the Courſe of Our Law) or els queſtionleſſe they took it in thoſe Times triable, as it was pleded by a Jury of the Viſne, either adjoining to the Coaſt (which is fitteſt) or of the Place where the Action was laid. See alſo 46 *Edw.* 3. *Statham, tit.* **Treſpas,** 38. Selden.

The Sea is phraſed, *Altum mare,* not to lead into the vaſt Conſideration of it, but, to ſtate and reſolve the Juriſdiction hereby intended. *Altum mare* being *extra regnum,* is exempt from the Ordinary Juriſdiction of Law; there the Power of the **Common Law,** as to Trial of Cauſes, determines; and, the Juriſdiction of the *Admiralty* takes Place, as by ſundry Parliament-Rolls, and is plain from the *Laws of Oleran* [8] ‡ (ſo called, for that they were made by *Rich.* I. an. regni 5to when He was at *Oleron,* an Iſle in the Bay of *Aquitaine,* now *Guienne,* at the Mouth of the River *Charent*) and is every where confirmed in Our Law-Books. *Altum mare* is the proper Region of the *Admiral*'s Juriſdiction, as appears, not only from the common Conſent of Books, and the concurrent Allowance of Time, but alſo by divers Statutes, declaring the Power of the *Admiral.* The 5 *Eliz.* c. 5. deſcribes particularly the *Lord Admiral*'s Juriſdiction [9], *Altum mare* is thought to be, where one can ſee no Land on either Side; otherwiſe He is ſaid to be *infra Corpus Comitatûs,* in which Caſe the *Coroner* ſhall execute his Office, the Country take Knowledge of it, and the Tryal ſhall be by a Jury of XII Men, and not by the *Admiral,* becauſe the Cauſe grows not *ſuper altum mare* [10]; and generally, where the Water flows and reflows, as in the *Abbot* of *Ramſay*'s Caſe [11]. 43 *Ed.* III. and in *Digg*'s Caſe, 17 *El.* in Scaccar. [12] There is a Diſtinction taken between the *Common Law* and the *Admiralty*—Proceeding according to the *Civil Law.* Tho' the Low Water Mark be *infra Corpus Comitatûs* at the Reflow, and, for Cauſes thence ariſing, determinable by the

4 Common

[a] 48 *Ed.* 3. fol. 3. [8] 1 *Inſt.* 260. b. *New Atlas* 143. XII. 4. *Heylin,* p. 230. *Seld.* II. 1102. 1109. 1382. *Camd.* 1115. *Prynne* on 4 Inſt. 126. *Wood. Danv.* 1 *Inſt.* 11. b. *Du Freſne,* To. 2. Part 2. p. 296. Leges *Oleronianæ. Hale* 146. v. *Spelm.* Reliq. 218. *Nicholſon* Eng. Hiſt. Lib. III. 121, 2. v. *Skinner,* Voc. For. v. **Law Merchant.** ‡ See the View of the Admiral's Juriſdict. and the Laws of Oleron, by Dr. Godolphin, 12°. Lond. 1661. v. ib. p. 13. [9] 4 *Inſt.* cap. XXII. *Stamf.* P. C. 51. b. *Dyer* 159. b. [10] 4 *Inſt.* 140. [11] Ib. *Spelm.* Rel. 221. [12] Ib.

by (f) *Witneſſes*, without a *Jury*. In like Manner are Proceedings before the, g (19), *Lord Conſtable*, and *Earl Marſhal*, upon a Fact com-

Common Law, yet when the Sea is full, the *Admiral* hath Juriſdiction *ſuper aquam* [13]. The Power of the *Admiral* is *ſuper altum mare* only, unleſs by ſpecial Commiſſion it be enlarged [14]. The Juriſdiction is very ancient, even before the Conqueſt; * That the Monarchs of *Britain* had command of the narrow Seas, is confirmed by Ancient Records [15], not only of King *Edgar*, who is ſaid *quatuor maria vindicare*, and of *Ed.* III. who in Rot. *Scotiæ*, 10°. regni ſui, ſays thus, " Nos advertentes quod Progenitores noſtri Reges *Angliæ*, Domini Maris *Anglicani* circumquaq; & " etiam Defenſores"— but alſo from ſeveral other Authorities, cleared by the Learned Mr. *Selden* in his *Mare Clauſum*. The Juriſdiction of the *Admiralty* hath been of great Conſideration, not only from *Ed.* III.'s Time, when it had its Solemnities of Proceedings, but from *Rich.* I.'s Time, in which and for long ſince, there were *Admirals* of the *Weſt*, *Eaſt* and *Northern* Coaſts, and of the *Floats* in the Mouth of the *Thames*. *Admirals* of *England*, I think there were none, till the 10th of *Rich.* II. when *Richard Fitz Alan*, the Younger, Earl of *Arundel* and *Surrey*, was created *Admirallus Angliæ*; and for ought that I can find, the firſt that carried that Title [16]. *Altum mare*, in the large Notion, is ſaid to be, *Mare Liberum, nullius in Bonis* [17]. Hence, becauſe they are the Pretenſions of all Nations, Who deſcend into them, they are to be accounted of by the *Law of Nations*; and the Offences done upon them, puniſhable by thoſe Laws. W. v. *Danv.* I. 261. *Spelm.* Reliq. 217. *Wood* C. L. 473. *Hugh*'s Abr. I. 110. 12 Co. 77, 79. 1 *Inſt.* 11. b. X. *Scriptt.* 1173, 16. 657, 11. 1187, 54. *M. Paris* 132. *Tyrrell*, II. B. 6. 442. *Nicholſon*, III. 121. *Scriptt.* poſt *Bed.* 666. *Somner* ad v.v. *Admiraldus*, *Amarellus*. Readings on the Statt. Tit. *Admiral*. *Hales* 36, 7. Dr. Duck 342. Wiſeman 179. 227. Sadler 173. 232. 258. 305.

(f) Since Our A. Time, many Inconveniencies happening [18], Piracies and Outrages committed upon the Sea, are to be tried by *Witneſſes*, with a *Jury*, by ſpecial Commiſſion to the *Admiral* from the King, wherein ſome of the Judges in *Weſtminſter-Hall* are to be Commiſſioners, and the Trial to be according to the Courſe of the Laws and Statutes of *England*. W. v. *Hawkins*, B. 1. XXXVII. § 3—5.— ib. XXXI. § 12.

g (19) *Curiæ Conſtabularij*,] That Court and the great Officer, Chief Juſtice of it, hath been long diſcontinued. Neither was any continuing *High Conſtable* of England ſince 12 *Hen.* 8. when *Edward* Duke of *Buckingham* was beheaded. He was the laſt High Conſtable, and by Inheritance of Tenure from the *Bohuns*, as You ſee in 6 *Hen.* 8. *Kel. fol.* 170. *b.* & *ſeq.* & 11 *Eliz. Dy.* 285. *b.* & *vide Rot. Fin.* 3 *Ed.* 1. *Memb.* 14. The Court is that which was titled the *Court of Chivalrie*, wherein all Matters of Armes, Treaſon committed beyond Sea, Warre, and the like, which could not be tried at the Common Law, were determinable *Summariè & de plano ſine ſtrepitu & figura judicij*, as the Words are in *Part.* 1. *Patent.* 7 *Ed.* 4. *Memb.* 9. where it appears the Office had been given to *John* Earl of *Worceſter*, to hold Plea of ſuch Things *quæ in Curia Conſtabularij ab antiquo videlicet tempore Domini Willielmi Conqueſtoris quondam Angliæ Progenitoris noſtri ſeu aliquo tempore citra tractari audiri examinari & decidi conſueverunt aut de jure debuerunt*; who ſurrendring his Patent, in the ſame Terms with particulars of the Office, it is granted to *Richard Widevill* Earl of *Rivers*, the King's Father in Law, for Life, and after his Death to *Anthony Widevill*. By the 1. *Statut.* of 13 *Rich.* 2. *cap.* 2. & 1 *Hen.* 4. *cap.* 14. the Office and Juriſdiction of the Court is beſt deſcrib'd. You may ſee 37 *Hen.* 6. *fol.* 3. & 20. 30 *Hen.* 6. *fol.* (a) 5. 6 *Hen.* 8. *Kelw. fol.* 171. *b. Brook tit.* **Prerogative** 31. Some Records are extant of the whole formal Proceeding by the Law of Armes in this Court, as eſpecially that of 17 *Rich.* 2. in the Tower concerning the Caſtell of *Breſt*, between *Hanley* and *Roches*, their Trials were by Battel or Witneſſes. Special Commiſſioners have now good Part of this Juriſdiction. In 2 *Part. rot. Patent.* 23 *Hen.* 6. *memb.* 20. *Thomas Kent*, Doctor of Law, is made *Sub-Conſtabularius Angliæ* for Life. Seld.

This Great Place of † *High Conſtable* of *England* is a very ancient Office, as old as the Conqueror, enjoyed by the *Bohuns* Earls of *Hereford*, ſucceſſively, for Ten of the Name together, who had the Office by Tenure of Inheritance: From them it deſcended to the *Staffords*, Dukes of *Buckingham*; the laſt was attainted of Treaſon, temp. *Hen.* VIII. [19] whereby this Office became forfeited to the Crown; and, ſince that Time never granted in Fee to any Subject, unleſs by Commiſſion for a Day or Two, upon the Trial of a Peer [20]. *Thomas de Mowbray* [21], Earl of *Nottingham*, was the firſt *Earl Marſhal* of *England*, made ſo *per Chartam Ric.* II. An. regni 9°. This Office has been for ſeveral Generations in the Houſe of *Norfolk*, to which it came by the Mother's Side, from the ſaid Earl of *Nottingham*. It is now executed by Deputation, the preſent Duke of *Norfolk* being a Roman Catholic [22]. " Vox *Conſtabularius* ab *Anglo-Normannis* adducenda quàm varie & Late " ab eis fuerit tandem uſurpata & extenſa, tractatu ſatis accurato, oſtendit *Spelmannus*, quem impri- " mis vide [23]." The Greateſt Encreaſe of the Authority of this Office. The *Earl Marſhal* of *England* hath been, ſince there were no *Conſtables*: For the Kings, ſince that Time, have referred many Matters to them, which in former Times were proper to the *Conſtable*. Neither had the

[13] 3 *Inſt.* 112. *Stamf.* 51. b. *Danv.* II. 262. [14] V. 28 *Hen.* VIII. 15. * 1 *Inſt.* 260. b. [15] *Danv.* II. 261. [16] *Spelm.* Reliq. p. 223. [17] V. *Sir Hen. Conſtable*'s Caſe, 5 *Co.* 108. b. [18] V. Preamble 27 *Hen.* VIII. 4.— 28 *Hen.* VIII. 15. (a) 6. † V. *Tindal* ad *Rapin*, III. 256. [19] *Rapin*, VII. 226. 247. *Brooke*'s Cat. 70. *Vincent.* Diſc. Errors 88. [20] V. *Eachard*, I. 642. 4 *Inſt.* XVII. 127. *Danv.* 259. *Wood* 472. *Seld.* III. 76, 7. 996. 1 *Inſt.* 74. a. 106. a. 391. b. v. 8 R. II. 5. 3 *Inſt.* 26. Petition of Right, 3 *Car.* I. (*Keb.* II. 1096. § 7.) [21] *Camd.* CXCIV. *Spelm.* Reliq. 169. [22] V. *Chamb.* p. 103. [23] *Somn.*

committed in another Kingdom, ſo as the Cogniſance of it belong to the Juriſdiction of the ſaid *Court of Chivalry*. So, in the Courts of certain Liberties in *England*, where they proceed by the, h(20), **Law of Merchants**, touching Contracts between *Merchant* and *Merchant*,

Marſhal any Precedency in Reſpect of his Place until King *Henry* VIII. in the 31ſt Year of his Reign, by Parliament deſigned Him Place next to the *Lord Conſtable*, and before the *Lord Admiral*. *Camd.* CXCIV. vid. *Somner. Cowell. Spelm.* ad v.v. *Duellum. Bellum. Campus.* **Battle.** 4 *Inſt.* 128. *Bract.* de Coron. c. 21. 294. b. *Sir J. Smith*, L. 2. c. 8. Ed. *Elz.* Eng. L. 2. c. 7.— L. 3. c. 3. 1 *Inſt.* 294. b. *Cuſt. Norm.* c. 68. *Cottoni* Poſth. 61. *Dyer* 201. 301, 2. *Madox'* H. Exchequer 382, 3. *Fort.* 131. *Hickes'* d. e. 35, 6. 41. *Dugd.* XXVI. *Spelm.* Reliq. 163. *Seld.* III. 711. § XV— Ib. p. 55. *Hale* 39. *Camd.* CXC. v. *Rapin*, VI. 217. n. 297, 8. *Mad.* H. Ex. 29. Sadler 203. 229. 242.

h (20) *Legem Mercatoriam,*] That is ſuch as the Law of the Staple in *Stat.* 2. 27 *Ed.* 3. *cap.* 2. Mention is of it in *Regiſt. Orig. in Computo, fol.* 135. *a.* & *Fitzh. Nat. Br. fol.* 117. D. Indeed the Nature of this Law is well expreſs'd by *Bartol.* in *π. tit. mandati vel contra. l.* 29. § *quædam* 4. ſpeaking of the Merchants Court (which Name may well be given to the Court of **Pee Poudrous**) *Nota*, ſaith he, *quod in Curia Mercatorum debet judicari de bono & æquo, omiſſis juris Solennitatibus. Hoc non dico quod debeat intelligi non habito reſpectu ad jura civilia quod eſſet contra l.* bona fides tit. Depoſiti, *ſed debet intelligi non inſpectis Solennitatibus juris, hoc eſt non inſpectis apicibus qui veritatem negotij non tangunt, ut ſi eſſet intentata actio directa cum competebat utilis, vel non erat conteſtata lis & ſimilia.* For in common Societie of Marchants, and mutual Contracts, Equity and good Conſcience, rather than ſtrict Law, is required. *Tryphonius π. tit. Depoſiti vel contra l.* 31. *Bona fides, quæ in contractibus exigitur, æquitatem ſummam deſiderat.* A ſpecial Caſe of this Law Marchant is in *Itin. Derb.* 2 *Edw.* 2. *MS.* where *John Combton* brings Debt *ſecundum Legem Mercatoriam* upon a Tally, againſt another Marchant, and tenders Suit by Two Witneſſes: The Defendant Wages his Law, but the Judgment is thus by (1) *Ormesby* pronounced. **John de Combton Marchand Port un brief ciens vers un** *Rauf* **Marchand & demande VI. Marks par un Juſticies forme ſelon la ley Marchand** (it had been commenc't by *Juſticies*, and came out of the common Place into the Eire) **& ad mis avant un taille la quelle il tender a prover per II. s. per** *Richard* **& par** *Geffrey* **que eſteyent al diee meſurer** (the Debt was due for Corne) **& al liverer, mes vous per voſtre ley vous voudrez coverer la quele ceſt cort en ceo cas ne voet my reſceiver & refuſes la prove que il vous tend ſelon ley Marchand & ſelon la Nature de ſun briefe, per que agard ceſt court q̃ John reſcovere ſa Debt vers vous come vers non defendu & ſes dammages de cent ſous.** See for this Matter of Suit *Ad cap.* 21. (8) Seld.

The Zeal of this Nation to Trade has notably appeared from *Hen.* III.'s Time, and before [24]; in which Deſcent, there have been above 120 Acts of Parliament relating to Trade; all Acts or Attempts [25] which have been derogatory thereto have been ever noted in this Nation to be diſcouraged and ſhort-lived. Tho' before the Conqueſt *Merchants* had Liberty of egreſs and regreſs for certain Time fixed: So not only the Laws of *Athelſtane*, but *Alfred*, as the *Mirrour* [26] relates, permitted Forty Days, and not above, for *Merchants Aliens*, repairing into *England*, to remain there, which the 30th Chap. *Magna Charta* confirms. After *Staples* of Trade were erected, and Trade limited to certain Places and Times, the *Merchant* grew diſcontented, and Trade fell; till, by the Stat. *Ed.* III. [27] all *Staples* were determined according to the Great Charter, and the *Merchants* were at Liberty to go and come with their Merchandizes, when and as He ſaw fit, till forbidden; as Encouragement is given to the *Merchant* to bring in Commodities, ſo Aſſurance of Safety to them and theirs, with ſuch ſpeedy Remedy, as the Nature of their being Strangers requires, according to the *Law* of the *Staple*, which contributed much to Trade, as did alſo the laying open of all Ports to Land Merchandize at. Another *Stat.* [28] gives Liberty to land Merchandize at any Port, entring them in the King's Books, paying his Cuſtoms, and *ſuch Merchandizes* not being prohibited. It allows Safety and ſpeedy Juſtice to all Traders, by the **Law Marchant**, which *Bracton* [29] terms, *Celeris Juſtitia*, which is indulged them as they are the common Inſtruments of Advantage, and, in Lieu of the ſame Kindneſs, the Natives of *England* have in their Countries. In the *Court of Pipowders*, which is eſtabliſhed in Fairs and Markets, by **Common Law**, Ancient Charters, and confirmed by ſeveral Statutes [30], The *Plaintiff* muſt ſwear that the Contract was made in the Time and Juriſdiction of the *Fair*, which done, there is Juſtice to be had *de horâ in horam*, ſpeedily. "Equus furto ſubductus ſic tandem uſu capitur, ſi integram horam per *Forum* obequitetur, aut aliàs "continuè & apertè ductus oſtendatur, & deinceps ejus Venditor ad eum, Qui ad *Telonium* ſedet, "accedens, tam equum cum vero ejus pretio, quam Prænomen, Cognomentum, victûs quærendi "rationem, & Locum Habitationis illi declaret, ac deniq; hæc omnia per unum Teſtem *Telonitæ* "bene perſpectum & cognitum comprobans in Librum inſinuari faciat [31]." The *Stat.* [32] about Trials

(1) *Ormesby.* [24] *Rapin*, I. 343. n. 346. II. 154— VI. 388.— VII. 293. [25] V. *Coke*'s Detection contin. III. 452, 3. *Polit. State*, Aug. 1713. 88. 102. *Mercury*, June 1713. *Guardian*, II. 323. *Engliſhman*, p. 15. [26] c. 1. § 3. ſub Finem. *Camd.* Anglic. &c. 227. 533. [27] 2 *Ed.* III. 9. [28] 3 *Hen.* VII. 7. [29] 334. a. 444. a. *Seld.* III. 1933. [30] 2 *Ed.* III. 15. 5 *Ed.* III. 15. 17 *Ed.* IV. 12. [31] *Cowell* Inſt. 134. 233. § 11. 31 *El.* 12. v. *Dyer* 99. N° 66.— 2 & 3 *Ph.* & *Mar.* 7. *Hickes* d. e. 97. ad Leg. 16. 6 Co. 12. a. 20. a. 4 *Inſt.* cap. LX. *Prynne* 190. *Readings* on *Stat.* Tit. *Fairs* and *Markets.* [32] 43 *El.* 12. Wiſeman 249.

Merchant, beyond the Seas, the Proof is by *Witneſſes* only: Becauſe, in ſuch like Caſes, there is not of the Neighbourhood a Number ſufficient to make up a *Jury* of XII Men: As in Contracts and other Caſes ariſing within the Kingdom is uſually done. In like Manner, if a (i) *Deed*, in which Witneſſes are named, be brought into the Courts of Law, Proceſs ſhall go out againſt ſuch *Witneſſes*, who, together

Trials of Aſſurance of Policy is thought to be a very Beneficial Law to avoid Differences and Suits, which otherwiſe would be tedious, chargeable, and detrimental to Trade. A. D. 1354. temps *Ed.* 3. The Parliament granted a Tax of 50 *s.* upon every Sack of Wool ſold in the Kingdom. It is affirmed that this Subſidy amounted to more than 350000 *Marks* a Year, that is, in Our preſent Money, upwards of Two hundred thirty-three thouſand three hundred and thirty Pounds. So conſiderable was the Woollen Trade in thoſe Days [33]. Since Mention is made above of the *Staples* it will be proper to obſerve, that *Staple* ſignifies this or that Town whither the *Merchants* of *England* were, *by Act of Parliament*, to carry their Wool, Cloth, Lead and Tin. What were the *Staple Commodities*, v. 14 R. II. c. 1. The Staple of Wool was removed to *Weſtminſter*, *Canterbury*, *Chicheſter*, *Briſtol*, *Lincoln* and *Hull*. *Tindal* ad *Rapin*, IV. 281. v. 13 & 14 C. II. 23. W. 1 *Inſt.* 11. b. 4 *Inſt.* cap. XLVII. *Cowell* Inſt. 224. *Wilkins* 9. f. 18. 25. 209, 38. *Skinner.* Vocc. Forenſ. **Law-Merchant.** *Hale* 162. *Spelm.* Rel. 252. *Vaughan*'s Reports 335.

(i) *Charta*,] A Deed, ſubſcribed by Witneſſes, Men of the chiefeſt Rank and Quality within the County and Neighbourhood [34], *in perpetuam rei memoriam*. Men of ſuch Diſtinction, being probably known, either by their *Hands* or *Signets*, which they affixed to their Teſtimony. If ſuch Deeds came in Queſtion, and the Parties alive to prove them, they were admitted in Proof; But, if they were of old Date and free from Suſpicion, upon producing them they were allowed "(Eve-"ry Man being, as it were, a Witneſs for Venerable Antiquity)." In theſe and ſuch like Caſes the Law allowed of Proof by Witneſſes; but where the Cauſes are referable to a proper County, and a *Jury* of the Neighbourhood can be had, *per Teſtes ſolum Lex nunquam litem dirimit* [35]. Becauſe it is the moſt excellent Form, *& remotior a corruptionis periculo*. Legal *Juries* are not made up of ſimple Men, they are in their Intention, and ought to conſiſt of Men of Worth and Prudence, and are the Readieſt Way to right Judgment of Fact of any in the World. The *Mos Patriæ*, and Ancient Trial of *England*, againſt which no wiſe Man's Mouth ought to be opened. W. In *Scotland*, the Seals of the Inferior Nobility, and better Sort of *Freeholders* were in common Uſe as early as *David* I.'s Time, A. D. 1124. and were then eſteemed as undeniable Evidence in Courts of Judicature: So that, if a Man's Seal was proved, He was obliged to warrant the Inſtrument to which it was affixed, and to ſubmit to whatever Inconveniencies his own Negligence might bring upon him [36]. "*Ingulphus* [37], ubi vocem Forenſem ſeu diplomaticam, *Chartam* vel *Cartam* non "uſu receptam fuiſſe ap. A. S. ſcribit, erroris arguitur in *Hickes* [38]. Qui duorum R. R. *Sax.* Di-"plomata citat, quæ *chartæ* nuncupantur, quibus addi poteſt iſtud *Eadgari* R. cujus in Fine ſic le-"gitur Scriptum: A. Dominicæ Incarnationis D.CCCC.LXX.VIII. Scripta eſt hæc *Charta*, *Car-"tula* frequenter legitur in Codd. Diplomaticis *A. Sax.* præſertim in ijs Eccleſiæ *Roffenſis*, qui in "*Textu Roffenſi* deſcribuntur— *Franco-Nortmanni* Indenturarum Auctores apud *Anglos* fuerunt [39]. "Illæ Donationum *Tabulæ* ſive *Codicilli*, quæ *Saxonibus*, **Landboc** [40], q. prædiorum Libri, *Nor-"mannis* Chartæ dictæ: Vulgo (quia rem faciunt evidentem) **Evidences** [41]." V. Pref. to 8 *Co.* 5. & ſeqq. *Spelm.* Reliq. 233. & ſeqq. *Seld.* II. 995. 1000. *Madox*, Form. Angl. Diſſert. XXIV. & ſeqq.— *Hiſt. Excheq.* Pref. Epiſt. *Glanvil*, L. 10. c. 12. *Dugd.* 33. a. b. 34. a. *Tyrrell*, I. Introd. CXVIII. & ſeqq. *Nicholſon*, III. 227, 8. *Bract.* L. 2. cap. 16. *Tyrrell*, III. Append. 65, 6. *Seld.* III. 1466.

Quoniam hujuſmodi Scripturæ non eſſet fides adhibenda, niſi ſignum intervenerit, quod talis donatio & Scriptura à conſcientia & Voluntate donatoris emanaret, ideo in teſtimonium & approbationem rei geſtæ, apponit donator *ſignum*, adjiciendo in *Charta* donationis clauſulam iſtam, quod ut ratum ſit & firmum, &c. Vel ſic, in cujus rei teſtimonium, huic ſcripto *ſigillum* meum appoſui. Debent etiam teſtes ad hoc vocari, ut ſub præſentia eorum omnia cum ſolemnitate procedant, ut veritatem dicere poſſint, ſi inde fuerint requiſiti, & eorum nomina debent in *Chartâ* comprehendi, & ſi in confectione *chartæ* præſentes non fuerint, ſufficit ſi poſtmodum in præſentia donatoris & donatorij fuerit recitata & conceſſa: & utilius & melius ſi in locis publicis, ſicut in *Comitatu* & *hundredo*, ut facilius probari poſſit, ſi fortè fuerit dedicta, & cum talis fuerit ſolemnitas adhibita, non multum refert, utrum proprio vel alieno *ſigillo* ſit *ſignata*, cùm ſemel à donatore coram teſtibus, ad hoc vocatis, recognita & conceſſa fuerit. *Bract.* Fo. 38. a. § 12.

From the Time of the *Norman* Conqueſt, thoſe which We now call **Deeds** or Writeings, were generally called *Chartæ*, **Charters** [42]. The Witneſſes to *Charters* ſeem to have been Antiently, for the moſt part, Men of good Note and Condition, very often Perſons of the Neighbourhood. Where the *Charters* were executed in the *County*, they are frequently atteſted by Gentlemen and Clergy of the Country: Where they were executed in *Cities* or *Towns*, they are often atteſted by the

[33] *Rapin*, IV. 283. *Spelm.* Reliq. 209. 223. [34] *Spelm.* Reliq. 256. [35] *Wilk.* 248. b. [36] *Nicholſon*, ſc. H. L. 247, 8. *Reg. Majeſt.* L. 3. c. 8. [37] *Fell*'s Edit. p. 70— *Savil* 901. [38] d. e. p. 63. m. [39] *Hickes* ad Ottleyum XXX. XXXI— d. e. p. 77—9. a. 149. [40] *Spelm.* Reliq. 233. *Tyrrell*, II. Int. LXIII. [41] *Somner.* [42] *Madox* Form. Diſſ. III, *Ingulph.* p. 901. lin. 40. Pref. Epiſt. to *Madox*' Hiſt. Excheq. VIII. XVI.

together with a *Jury* ſhall enquire upon their Oaths, whether it be the Deed of that Party, whoſe it is ſuppoſed to be. Wherefore, the Law of *England* does not call in Queſtion any other Law which finds out the Truth by Witneſſes, eſpecially when the Neceſſity of the Caſe ſo requires. The Laws of *England* obſerve a like Method, not only in the Caſes already put, but in ſome others, which it is not material now to enlarge upon: But it never decides a Cauſe *only* by Witneſſes, when it can be decided by a *Jury* of XII Men, *the Beſt and moſt effectual Method for the Trial of the Truth*; and, in which Reſpect, no other Laws can compare with it. This Proceeding is leſs liable to the Hazard of Bribery, Subornation, or other ſiniſter Methods; neither can this Method of Proceeding in any Caſe miſcarry for Want of Evidence: What the Witneſſes give in upon Oath cannot but have its due Effect: Neither can a *Jury* be perjured, but that for ſuch their Crime they muſt expect a very ſevere Puniſhment, and the Party thereby aggrieved is, and will be entitled to his Remedy. Theſe Things are not tranſacted at the Will and Pleaſure of Strangers, or Parties

the Provoſt, Mayors, Bayliffs or Civil Officers of thoſe *Cities* or *Towns*. "Ad probationem Inve-" ſtituræ non alij Teſtes quam Pares admittuntur, quia coram eis ſolemnitèr fieri debet *Inveſti-*" *tura* [43]." It is generally thought, that K. *Edward* the Confeſſor firſt brought into this Kingdom the Way of affixing to *Charters* a *Seal* of Wax: That having been in *Normandy* at the Court of his Couſin, the Duke of that Country, He learned ſeveral *Norman* Uſages; and after his Return, introduced ſome of them in this Kingdom; particularly this of ratifying *Charters* by a *Seal* of Wax. As to what a learned Lawyer [44] ſays; it may be a little conſidered, It is true the Word (*Sigillum*) occurs in many Latin *Charters* before the Conqueſt; but if it be likewiſe true, that *Sigillum* was in thoſe Times uſed in the ſame Senſe with *Signum*, as *Sir Henry Spelman* [45], and others have obſerved; then perhaps no great Streſs can be laid upon the Words of *Subſignation* to K. *Edwy*'s Charter mentioned in the Lord *Coke* [46]. *Sigillum* did not always ſignify a *Seal* of Wax. There is a *Charter* of this K. *Edwy*, A. D. 956. granting to the Monaſtery of *Bath* 30 *Manſes*, &c. at *Dyddanhame*, ſubſigned, "Ego *Ædwig* Rex *Anglorum* indeclinabiliter conceſſi ✠. Ego *Eadgar* ejuſdem "Regis frater celeritèr conceſſi ✠ Ego *Odo* Archiepiſcopus cum *Signo* Sanctæ crucis impreſſi ✠ "Ego *Ælffinus* Præſul *Sigillum* agyæ crucis impreſſi ✠ &c." As to K. *Offa*'s Charter of Peterpence, in Caſe that Learned Gent. had informed us where it might be ſeen, it would perhaps appear to be, either a great Rarity, or a Counterfeit [47]. In Effect, I conceive it may be taken for granted, that from the Time of the *Norman* Conqueſt, *Seals* came to be generally uſed in this Kingdom. Then *Charters* were ratified or rendered Authentic by affixing to them a *Seal* of Wax. Which Cuſtom has been uſed in *England* ever ſince [48]. The *Seals* reſpectively, were in Wax of ſeveral Colours, red, green, or yellow; for Shape, commonly round or oval, but of different Sizes. Thoſe of Eccleſiaſtical Perſons were, I think, uſually oblong or oval, tho' not always ſo. The Seal was wont to be affixed to a Label of Parchment faſtened to the Fold at the Bottom of the *Charter*, or elſe to a ſilk String [49], (either white, red, green or mixt, as it happened) faſtened in like Manner to the Fold, or elſe to a *Sliver* of Parchment cut from the Bottom of the Charter, and mande pendulous. . . . . The *Seal* was apparently of great Force, inſomuch that the *Charter* had, in a Sort, its Strength and Validity from it [50]. In elder Times with us the Credit of Evidences and legal Inſtruments was juſtified by Authentic *Seals* of the Parties, and not by the Subſcription of Notaries [51]. *Chirographum*, was (if I am not miſtaken) a Writing or Deed conſiſting moſt commonly of Two Parts, both of the ſame Tenour; whereof One of the Parties concerned was to have one Part, and the other t'other Part. For which Purpoſe the Deed was written (ſuppoſe) twice upon ſame Piece of Parchment, and between the Body or Content of each Part the Word (*Cirographum*) was written in capital Letters, and cut thro' in the Middle of thoſe Letters rectilinear or indentwiſe; ſo that, when the Two Parts of the *Chirographum* were parted by the Knife, one Part would ſhew one Half of thoſe capital Letters, and the other Part the other Half of them: And when the Two Parts came to be joined together as they were before the cutting aſunder, the Word or Letters cut thro' would appear entire [52]. *Charters* were formerly executed with ſo much Notoriety and Publickneſs, that there was no Occaſion for the Witneſſes to ſet their own Names; that being done by the Clerk in the Preſence of them all. *Madox* Form. Diſſ. XXXI. See more upon this Article in *Spelman*'s Remains, of Antient Deeds and Charters. And, in Dr. *Hickes*'s Epiſtolary Diſſertation paſſim. v. *Camd.* Brit. 345. v. Mr. Caſley's Cat. The Pref. v. poſt.

[43] *Cujac.* Com. in Lib. 1. de feudd. Tit. 1. p. 18. (Edit. *Lugd.* 1566) *Madox*' Form. Diſſ. XXVI. [44] 1 *Inſt.* 7. a. [45] Ad. v.v. *Sigillum* & *Signum*. [46] Ubi ſupra. [47] *Madox* Form. Diſſ. XXVII. [48] Ib. [49] *Hickes.* g. a. 160. ib. m. [50] *Madox* Form. Diſſ. XXVIII. *Seld.* III. 1466, 7. [51] *Madox*, ubi ſup. p. 131. [52] Ib. XXVIII, IX.

wholly unknown, but upon the Oaths of honeſt, conſiderable and creditable Men, who Value their Character, who are Neighbours to the Parties concerned, to whom there can be no Cauſe of Challenge or Diſtruſt as touching the Verdict they ſhall give in. Oh! what deteſtable Villanies often happen from the Method of Proceedings by *Witneſſes only*. If a Man contract Matrimony in a clandeſtine Manner, and afterwards before Witneſſes, betroth himſelf to another Woman. In this Caſe the (k) *Contentious Court* will oblige him to conſummate with this laſt Woman; and the (l) *Penitential Court* will adjudge him to cohabit with the firſt, if he be duly required thereto; and He will be obliged to do *Penance* every Time He ſhall be informed againſt for cohabiting with the other Woman, to whom He was ſo betrothed; nay, tho' in both Courts, one and the ſame Man be the Judge. May one not ſay in the Caſe before Us, as it is written concerning the *Behemoth*, [Job XL. 17.] That indeed it is very intricate, and perplexed. The Perſon contracting ſhall never afterwards cohabit with either of the Women, or with any other Woman, without being proſecuted for ſo doing. A Miſchief of this Kind cannot poſſibly happen in any Caſe, according to the Proceedings of the Law of *England*, tho' a *Behemoth* himſelf were Solicitor in the Cauſe. Are you not now convinced, *moſt excellent Prince*, that the more Objections You raiſe againſt the Laws of *England*, the more amiable and reſplendent they appear.

(k) *Forum Contentioſum,*] The Place of Judicature, the contentious Juriſdiction, which gives the Party, to whom He has plighted his Troth, her Action of the Caſe, notwithſtanding He is privately married to the firſt: The Party to whom ſuch *Affiance*, upon Agreement of Marriage, is made, has her Damage, for that ſhe loſeth her Opportunity of Marrying with another. W. *Proles, de affidata & non maritata, non eſt Hæres.* 1 *Inſt.* 34. a. *Cowell & Somn.* ad v.v. *Affiance, Affidatus, Affidare. Suarez* de Legibus, Lib. 8. Cap. VI. § 13. 14. *Madox* Form. Diſſ. XI. XXII. v. *State Trials*, I. p. 407.

(l) *Forum Pœnitentiale,*] " Forum Pœnitentiæ, vulgò, Forum Conſcientiæ. In Bulla Innocentii III. Papæ in Tabul. Abbatiæ *Barbellenſis*, Ch. 36. *Du Freſne. Suarez*, ubi ſup.

CHAP. XXXIII.

Why ſome of Our Kings have taken Diſguſt at the Laws of England.

Prince.] I Am convinced that the Laws of *England* eminently excel, beyond the Laws of all other Countries, in the Caſe you have been now endeavouring to explain; and yet I have heard that ſome of my Anceſtors, Kings of *England*, have been ſo far from being pleaſed with thoſe Laws, that they have been (21) Induſtrious

(21) *Satagentes proinde leges civiles ad Angliæ regimen producere,*] I confeſs I here underſtand him not. What Kings of England ever deſired the Civil Laws of *Rome?* I have read of a Proteſtation againſt them in Parliament by the King and Lords, which You may ſee in *rot. Proceſſ. & jud.* of the Appeal of *Thomas* Duke of *Gloceſter*, and others, againſt *Alexander* Arcbiſhop of *York*, *Robert de Vere* Duke of *Ireland*, *Michael de la Pole*, Earl of *Suffolk*, and *Robert Treſilian*, Chief Juſtice, *in Parliamento Weſtm.* 3 *Febr. Anno* 11 *Rich.* II. where, upon Default of the Appellees, the Appellants deſire that the Court would proceed to Judgment. **Sur quoy les dits roy noſtre ſeignior & ſeigniors du parlament priſtront deliberation tanque lendemain le marcedy prochein enſuant, a quel temps les** *juſtices & ſergeants & autres ſages du ley de roialm,* **& auxint les** *ſages de la ley civill* **feuront charges de par le roy noſtre dit ſeignior, de doner**

Induſtrious to introduce, and make the *Civil Laws* a Part of the Conſtitution, in Prejudice of the *Common Law*; this makes me wonder

ioiall counſeill as ſeigniorꝫ du parlement de duement proceder en la cauſe de l'appel ſusdit, les queux *juſtices ſergeants & ſages de la ley du roialm,* **& auxint les dits** *ſages de la ley civill* **priſtront ent deliberation, & reſponderont, as dits ſeigniorꝫ du parlement, que ils avoient veue & bien entendue le tenor du dit appell, & diſoient que meſme l appele ne fuſt pas fait ne afferme ſolonque l'ordre que l'une ley ou lautre requireit. Sur quoy les dits ſeigniorꝫ de parlement priſteront ent deliberation & adviſement, & per aſſent du roy noſtre dit ſeignior, & de iour common accord eſtoit declare que en ci haut crime come eſt pretendue, en ceſt appelle, que touch le perſon du roy noſtre dit ſeignior & le ſtate de tout ſon roialme, perpetre per perſons que ſont peers du roialme obeſque autres, la cauſe ne ſerra ailors deduc que en parlement, ne par autre ley que ley & cours du parlement, & q'il appertient as ſeigniorꝫ du parlement, & a lour franchiſe, & libertie d'ancien cuſtume du parlement, deſtre juges en tieux cas, & de tieux cas ajugger per aſſent du roi, & que en ſi ſerra fait en ceſt cas per agard du parlement, pur ce que** *le roialme d'Engleterre n'eſtoit devant ces heures, ne al' entent du roy noſtre dit ſeignior, & ſeigniors du Parlement, unques ne ſerra rule ne governe per la ley civill,* **& auxint leur entent neſt pas de reuler ou governer cy haute cauſe come ceſt appell eſt, que ne ſerra ailors trie ne termine que en parlement come dit eſt, per cours proceſſe & ordre uſe en aſcun court ou place plus bas deins meſme le roialm, queux courts & places ne ſont que executors d'aunciens leys & cuſtumes du roialme & ordinances & eſtabliſhments du parlements. Et feuſt adviſe au meſmes les ſeigniorꝫ du parlement per aſſent du roy noſtre dit ſeignior, que ceſt appel fuit fait & afferme bien & aſſets duement, & le proceſſe d'ycelle bone & ferme ſolonc les leys & cours du parlement, & pur tiel l'agarderoit & ajuggeroit.** I remember alſo King *Stephen*'s publick Edict againſt the Laws of *Italy*, but remember not any Story or Authority teaching that any of Our Kings would have had them here uſed. That of *Stephen* is related by that noble and moſt learned Friar *Roger Bacon* in his *Compendium Theologiae*, or his *Opus minus* (both thoſe Names are of one MS. Book) where ſpeaking of the Civil Laws of *Italy*, and that they are abuſed, and too much affected by Clergymen, leaving their Profeſſion to ſtudy thoſe Laws, he thus adds; *Praeterea omne regnum habet ſua jura quibus laici reguntur; ut jura Angliae & Franciae; & ita ſit juſtitia in aliis regnis per conſtitutiones quas habent, ſicut in Italia per ſuas. Qua propter cum jura Angliae non competant ſtatui clericorum, nec Franciae, nec Hiſpaniae, nec Almanniae, ſimiliter nec jura Italiae ullo modo. Quod ſi debeant clerici uti legibus patriae, tunc eſt minus inconveniens ut Clerici Angliae utantur legibus Angliae, & Clerici Franciae utantur legibus Franciae, qua propter maxima confuſio Clericorum eſt quod hujuſmodi conſtitutionibus laicalibus ſubduntur colla. Rex quidam Angliae* Stephanus *allatis legibus Italiae in Angliam publico edicto prohibuit, ne ab aliquo retinerentur. Si igitur laicus Princeps laici Principis alterius leges reſpueret, multo magis omnis clericus deberet reſpuere leges laicorum. Addo etiam, quod magis concordant jura Franciae cum Angliae, & e converſo, propter vicinitatem regnorum & communicationem majorem gentium iſtarum, quam Italiae & illarum. Quare deberent magis clerici Angliae ſubjicere ſe legibus Franciae & e converſo, quam legibus Lombardiae.* This was a Kind of Invective againſt the Receiving of the Civil Law amongſt the Clergy in any other Nation, ſaving that wherein it was firſt bred, that is, the *Italian*. Our Stories have no Mention of this Edict of *Stephen*. But it is in an Author of better Authority (in regard of his Time) than Friar *Bacon*; I mean *John* of *Salisbury* living under *Hen.* II. He in his *de nugis curialium, lib.* 8. *cap.* 22. ſpeaking of ſuch as too prophanely meddled with what the Clergy had to do, goes on with, *Alios vidi qui legis libros deputant igni, ſic ſcindere verentur, ſi in manus eorum pervenirent jura vel canones. Tempore regis* Stephani *a regno juſſae ſunt leges Romanae, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis aſciverat. Ne quis etiam libros retineret edicto regio prohibitum eſt, & vicario noſtro indictum ſilentium. Sed, Deo faciente, eo magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare.* Whereas Friar *Bacon* takes it clear, that he prohibited the Civil Laws; this *John* of *Salisbury* (a Man of great Place and Authority both with the King and Pope) ſeems to affirm it only of the Canon Law: For he remembers it as an Offence to the Church. Indeed in Archbiſhop *Theobald*'s Time, both the Canons and Civil Law began to be publiſhed, and it is like enough that he might bring in *Ivo*'s or *Gratian*'s Decree. *Ivo*'s was written in Time of *H.* I. and *Gratian*'s under King *Stephen*. That *Theobald* was before Abbot of *Bec* in *Normandy*, and went to *Rome* for his Pall, and ſo, it ſeems, brought thoſe Laws home with him in 3 *Stephani regis*. It is marvel that Our Stories are ſo ſilent of this King *Stephen*. But ſee the Monks *ſub anno* 1139. and eſpecially *Guil. Malmesb. hiſt. novell.* 2 *fol.* 103. *b.* touching the Council of *Winchester*, where the Ground of his Prohibition perhaps ſhews it ſelf. Selden.

King *Hen.* VI.'s Queen was a Niece to the Queen of *France*, and came out of a Country, where an Arbitrary Government prevails: In order to raiſe her own Power, ſhe inſiſted and infuſed into her Favourites, that the *D. Glöſter*'s Adminiſtration, according to the Strictneſs of the National Laws, was mean, and below the Dignity of that Sovereign Power and Dominion, which the *Civil Law* confer'd on the King's Perſon; and therefore ſhe countenanced ſuch Proceedings, as looked Imperious, and abſolved from all Reſtriction. Why may not Our Author have reſpect to this particular Character and Caſe? That Unfortunate Prince *Rich.* II. did declare, with a ſtern and reſolute Countenance, "That the Laws were only in his Mouth and Breaſt, and that He himſelf alone, "could make and change them, and that the Lives, Lands and Goods of his Subjects were his, to "be diſpoſed of, at his Will and Pleaſure [2]. It was reſolved 11 R. 2. n. 14. *We are not governed*

4

[2] 278. *Petyt*, Pref. 54.

wonder what They could intend, or be at by ſuch Behaviour.

verned by the Civil Law [3]. *Empſon* and *Dudley*, contrary to the ancient Way of trying Men *per Legem Terræ* [4], obtained an Act of Parliament [5], " whereby Authority was given to the Juſtices of Aſ-" ſiſe in their Seſſions, and to the Juſtices of the Peace (without any Trial by a Jury) upon Infor-" mation for the King, by their Diſcretions to hear and determine all Offences and Contempts a-" gainſt any Penal Statute then in Force (ſaving Treaſon, Murther or Felony)" this being directly contrary to the Original Conſtitution, introduced ſuch numerous and incredible Oppreſſions and Deſtructions of the People, that *Empſon* and *Dudley*, for executing it with Severity, were indicted for High Treaſon, attainted and hanged for their cruel Diligence, and the Statute it ſelf was repealed [6]. One of the Articles againſt Cardinal *Wolſey*, 21 *Hen.* 8. was, for that He did endeavour to ſubvert " Antiquiſſimas Leges hujus regni, univerſumq; hoc regnum *Angliæ* Legibus Imperialibus " ſubjugare." 'Tis fit that thoſe who attempt to ſubvert the Laws, ſhould, according to the old Writ [7], be carried *ad Gaolam de Newgate*. . . . . " Merito Beneficium Legis amittit Qui Legem ipſam ſubvertere intendit. W. 156. *Seld.* II. 1109. 3 *Inſt.* 208. *St. Amand* 46. ſeveral Authorities quoted there, v. *Hales* 29. 30. 65. 71. 106. *Flet.* 468. & ſeqq. *Dugd.* 3. b. A. 292. *Wilk.* 215. *Atk.* 42, 3.

[3] *Ruſhw.* I. Append. 33. v. Mr. *Whitlock*'s Memorial of Engliſh Affairs, p. 109. *Tyrrell*, III. B. 12. 919. & ſeqq. the Caſe of *Nevil* Archbiſhop of *York*, &c. Pref. to 8 *Co.* 3. 4. 7. a.
[4] Ante note f. [5] 11 *Hen.* VII. 3. [6] 1 *Hen.* VIII. 6. *Raſt.* 10. 2 *Inſt.* 51, 53. 4 *Inſt.* 40. [7] *Ad capiendum impugnatores jurium Regis.* Reg. 64. a.

CHAP. XXXIV.

The Chancellor's Anſwer.

Chancellor.] YOU would ceaſe to wonder, *My Prince*, if You would pleaſe ſeriouſly to conſider the Nature and Occaſion of the Attempt. I have already given You to underſtand that there is a very noted Sentence, a Favourite Maxim, or Rule in the *Civil Law*, that, a (22), *That which pleaſes the Prince has the Effect of a Law.* The Laws of *England* admit of no ſuch Maxim,

a(22) *Quod Principi placuit,*] That is *Ulpians* in π *tit. de conſtit. Princip. l.* 1. *Quod Principi placuit legis habet Vigorem, utpote cum lege regia, quae de imperio ejus lata eſt, populus ei & in eum omne ſuum imperium & poteſtatem conferat.* The ſame is in *inſtit. tit. de jure nat.* § *ſed & quod.* And thence have the Greek Lawyers their ὅπερ ἀρέσει τῷ βασιλεῖ νομὸς ἐστι, as *Harmenopulus*, a Judge of *Theſſalonica*, expreſſes it, *Procheir. lib.* α *tit.* α. And the Emperor is in *Near. diatax.* 105. *cap.* 2. titled νομὸς ἔμψυχος, a *Living Law.* The two Codes of *Theodoſius* and *Juſtinian*, the *Gregorian* and *Hermogenian* Codes, the *Nearae diataxeis*, or *Authenticks*, and the reſt of the *Novellae*, are nothing but Conſtitutions by the Emperors, to whom the State of Rome permitted all by the *Lex regia* that was before in the People of Rome. Selden.

" Generalis Conſtitutio eſt, *quod Principi placet, ut Legis vigorem habeat* [1]." The *Civilians* agree this Maxim of the Law to import, " Placitum, non meræ Voluntatis aut arbitrii, ſed Ratio-" nis, Conſilii, Juſtitiæ." In *Hen.* II.'s [2] Time (an happy Reign, when Juſtice ſo flouriſhed, that no Man durſt be unjuſt, or contumacious againſt the Laws) and who ſeconded his Power with Virtue, did ſo demean himſelf, that *Glanvil* [3], One of his Judges, writes, " Leges *Anglorum* licèt " not ſcriptas, Leges appellari non videtur abſurdum, cum hoc ipſum Lex ſit, *Quod Principi placet* " *& Legis habet vigorem*, eas ſc. quas, ſuper dubijs in Conſilio definiendis, Procerum quidem Con-" ſilio, & Principis accedente Authoritate, conſtat eſſe promulgatas. Legibus aſtringuntur *Rectores* " *Politici*, nec ultra poſſunt procedere in proſecutione juſtitiæ, quod de Regibus & alijs Monarchis " Principibus non convenit, quia in ipſorum pectore ſunt Leges reconditæ, prout Caſus occurrunt. " Et pro Lege habetur, Quod Principi placet, ſicut jura Gentium tradunt & definiunt [4]. In *Ca-* Wiſeman 190. " *ligulâ*, inquit *Scaliger* [5], lego indubitate ne quis reſpondere poſſit, præter eum. Vox Tyrannica " ſed ſalis acuta, ſe ſublaturum juris conſultos, ita ut ipſius Voluntas ſit pro jure . . . . . cujus Vo-" luntas requirenda foret, & non Legum Sanctiones, quas prorſus ſuſtuliſſet [6]." It is a *Maxim* of the *Civil Law*, that the *Regal Power* is *ſupreme, Sovereign* and abſolutely *above* all Law. The *Civil*

[1] *Pacius* in Inſt. Dig. &c.— *Iſagog.* Tit. IV. de Conſtitutt. Princ. D. L. 1. p. 52. Anal. p. 31. 297. Axiom. 9. 945. [2] *Rapin*, III. 90. [3] *Prol.* ante Tractat. de LL. 2. a. *Seld.* ad Flet. 466. 472. *Madox*' Hiſt. Excheq. 23. [4] *Aquin.* 300. 423. [5] Ad *Sueton. Calig.* c. 34. [6] *Hottoman* ib.

Maxim, or any Thing like it. A King of *England* does not bear ſuch a Sway over his Subjects, as a King *merely*, but in a *mixt Political Capacity:* He is obliged by his Coronation (b) Oath to the Obſervance of the Laws, which (c) ſome of Our Kings have not been well able to digeſt, becauſe thereby they are deprived of that Free Exerciſe of Dominion over their Subjects, in that full extenſive Manner, as *thoſe Kings* have, *who* preſide and govern by an *Abſolute Regal Power*; who, in Purſuance of the Laws of their reſpective Kingdoms, in particular, *the Civil Law*, and of the aforeſaid

Civil Laws, which prevail in all the Kingdoms of *Europe* (except *Britain*) and are therefore advanced in Glory, above all Human Laws, *They* make the Pleaſure of the King the Law, "*Quod Prin-* "*cipi placet*, &c. [8] In the Time when *Bracton* [9] wrote, the King could do no more by his Prerogative, than the Law allowed him to do; and, tho' it is true, It is his Will and Authority which gives Vigour to the Law, yet *this* only as it is declared in Parliament, and in thoſe Acts, which had before received the Conſent of his Great Council, *Conſilio Magiſtratuum ſuorum*. *Rapin* [10], under the Reign of *James* I. obſerves, that the People could not ſee without Grief, ſuch a Number of Proclamations, which ſeemed to ſuppoſe, that the King's Will was the ſole Rule and Meaſure of the Government. To theſe Heights would *James* I. have carried his Prerogative, *an ambiguous Term*, by which He meant *an Abſolute Power*, or ſomething very like it. But the *Engliſh*, for the moſt part, underſtood by that Word, only a Power in the Perſon of the Sovereign to command or act in Matters which were not repugnant to the Law, or for which the Law had not provided, and certain Acts of Grace and Favour which the King might do for ſome private Perſons, provided theſe Acts were not detrimental to the reſt of the Nation. V. *Sir Robert Atkins*, p. 42. Pac. Anal. p. 31. 297. Axiom. 9. 945. Pitiſc. ad v. Lex Regia. Gronovius & Noodt's Oratt. by Barbeyrac. 8° Amſt. 1714. Grot. Florum Sparſio, p. 100. Domat. p. 3. a.— Vol. 2. p. 16. b.

(b) The Form of the Coronation Oath ſee in the Lord *Clarendon*'s Hiſt. [11], That the Coronation Oaths have generally for Subſtance, been the ſame from the very Foundations of the Government, muſt not be denied: The Oaths of the moſt General Expreſſions implying as much as thoſe which are more particular: Not but that ſometimes the Lords and Commons have prevailed upon Our Kings, before their Coronation, to ſwear to ſome Charter, drawn up for the preſent Time, expreſſing ſome Rights, which before had been controverted. *Matthew Paris* [12] ſhews a memorable Conteſt 28 *Hen.* III. for a Charter which was ſworn to at one of that King's three ſeveral Coronations. But, that theſe Oaths cannot, without incurring a Premunire, or higher Puniſhment, be altered or adminiſtred by Authority derived from any Power, leſs than the Legiſlative, is Evident from the Nature of the Thing [13]. There cannot be a more ſolemn Oath, than that which is taken by Our Princes at their Coronation, to which the Prince is obliged, as to the Matter of it, before his Coronation; He is ſworn to hold, keep and confirm the Laws of the Church and People, and what theſe are, *Magna Charta*, **The Petition of Right**, and other Acts of Parliament do ſhew. See *Edw.* II. Cor—Oath *Rapin*, IV. 129. v. *State Tracts*, I. 445. *Cowell*, Inſt. 306. *Cooke* Arg. Anti-Norm. XI. XVII. *Tyrrell*, I. Introd. LVIII. v. *Sir Robert Atkins*, p. 42. v. Whitl. M. 84. b. Sir R. Atkins's Tracts, p. 413. Sadler pp. 71. 88. 91, &c. 23, 193.

(c) Tho' King *John*, *Hen.* III. *Ed.* II. *Rich.* II. and *Hen.* VI. (in whoſe Reigns may be ſeen the Natural Products of Arbitrary Meaſures) may as probably be intended as any, in regard that Our A. might think that the Rigour of ſome of their Proceedings exceeded the Limits of the Law, and tended unto ſomewhat inconſiſtent with Politic Dominion; but there appears no ſignal Endeavour in any of Our Princes ſo to alter the Frame of our Laws: It ſeems rather to have an Eye to ſome particular Actions, not ſo ſtrictly Legal, than to any formed Deſign towards ſuch an Attempt. The Expreſſion is General: Perhaps *Ed.* III. may be meant, and the **Statute** the 14th of his Reign [15], which provides "That the Realm of England, ſhall not be put in Subjection of him, "his Heirs, or Succeſſors, as Kings of *France*. Any Alteration or Innovation with Reſpect to Our Laws is tenderly reſented by the Subjects of *England*, which Jealouſy reſults from the Nature of Our Conſtitution. The Way of raiſing Money by a † *Benevolence* in the Time of *Ed.* IV. was neither well underſtood nor complied with. The *Lord Bacon* [16] ſays, "That the King ſuſtained "much Envy upon that Account [17]." Amongſt the many Inſtances of Male Adminiſtration charged on King *Charles* I. * Loans without Authority of Parliament, * Ship-Money, Oaths on the Subject to diſcover the Value of their Eſtates, Arbitrary Taxes and breaking the Bounds of the Foreſt bore hard upon him. Nay, the *Noble Hiſtorian* [18], in his Tender Way of expreſſing Himſelf, ſeems indirectly, to reflect upon the King in the Affair of making his Park between *Richmond*,

[8] V. *Bract.* L. 3. c. 9. de Actionibus 107. a. b.— Lib. 1. c. 1. *St. Amand* 167. [9] *Tyrrell* Bibl. Polit. D. 5. *Tyrrell*, I. Introd. CVIII. *Cowell*, v. **Prerogative of the King**, *Rapin*, II. 143. *Opuſc. de Naturâ Legis Naturæ*, Cap. XXVIII. *Ruſhw.* II. 486— [10] IX. 308—X. 6. [11] I. 452. 483. (*Keb.* 121.) *Crit. Hiſt. England* 294. *State Tracts*, II. 92, &c. [12] V. ib. 563. 566. 572. [13] *Tyrrell*, B. 6. p 8. [15] *Pulton*, p. 140. *Keb.* 107. † Whitl. ib. 183. [16] *Kennett*, (*Hen.* VII.) I. 461. b. 602. b. *Rapin*, VI. 112. [17] V. *Rapin*, III. 298. * *Croke*, Charles 524. 601. **The Petition of Right**, *Keb.* II. 1096. *Burnett* 381. [18] I. 77.

foreſaid *Maxim*, govern their Subjects, change Laws, enact New Ones, inflict Puniſhments, and impoſe Taxes, at their mere Will and Pleaſure, and determine Suits at Law in ſuch Manner, when, and as they think fit. For which Reaſon *Your Anceſtors* endeavoured to ſhake off this *Political* Frame of Government, in order to exerciſe the ſame *Abſolute Regal Dominion* too over their Subjects, or rather to be at their full Swing to act as they liſt: Not conſidering, that the Power of both Kings is really, and in Effect equal, as is ſet forth in my aforeſaid Treatiſe, *de Natura Legis Naturæ*, viz. That it is not a Reſtraint, but rather a Liberty to govern a People by the juſt Regularity of a *Political* Government, or rather Right Reaſon; that it is the greateſt Security both to King and People, and takes off no inconſiderable Part of his Royal Care. That this may the better appear, You will pleaſe to conſult the Experience You have had of both Kinds of Government; to begin with the *Regal*, ſuch as the King of *France* exerciſes *at preſent* over his Subjects; and, in the next Place, you will pleaſe to conſider the Effect of that *Regal Political Government* which the Kings of *England* exerciſe over their Subjects.

mond and *Hampton Court*, his Words are, "The King was exceſſively affected to Hunting, and "the Sports of the Field [19]." Under King *James* II.'s Government, "It was a common Doc- "trine induſtriouſly ſpread at Court, that the King's Power to diſpenſe with (i. e. to unmake) and "vary the Laws, was *Law*, meaning the *Imperial* or *Civil Law* . . . . . ſuch Fallacies, an Arbi- "trary Miniſtry, and *Doctors* of the ſame Stamp will, whenever Opportunity offers, palm up- "on a weak Prince." v. *Rapin*, III. 298, 360.— VII. 656. 682.— IX. 23. 138. 221. XI. 112. 173. See Mr. St. John's Letter to the Mayor of Marlborough in the Coll. before Lord Bacon's Works.

[19] V. *Eachard*, II. 203. *Burnet* 47.

CHAP. XXXV.

The Inconveniencies in France *by Means of the Abſolute Regal Government.*

YOU may remember, *moſt Worthy Prince*, in what a (a) Condition You obſerved the Villages and Towns of *France* to be, during

(a) This Chapter treats of the Condition of *France* under *Lewis* XI. who laid the firſt Foundation of the Abſolute Power, ſince exerciſed by the Kings of *France*. He governed, not according to the Ancient Conſtitution of *France*, by a General Aſſembly of the three Eſtates, by whoſe Sanction every One was bound, not the King excepted. This Way of Government being, after a long Continuance, changed [1], it was made Capital (not only to endeavour, but even to mention the Reſtitution thereof) They were ruled by Armies and Councils of Power, in which Royal Will and Pleaſure only preſided. W. The Hiſtorians give *Lewis* XI. a Character much the ſame. The latter Part of his Time was a Voluntary Impriſonment in the Caſtle *du Pleſſis le Tours*, where none could enter, but thro' a Wicket, the Walls thereof being armed with Iron-ſpikes, and lined Day and Night with Croſs-bow-Men. Such indeed is that Life which *Tyrants* embrace as happy. They are afraid of Enemies abroad, and of their Subjects at home; and not only of their Subjects, but of their Domeſticks, Kinsfolk, Brethren, Wives, Children, and near Relations. . . . . A Tyrannical Temper is generally accompanied with Cruelty and Suſpicion, Perſons of that Temper love Informations, as they love their Souls; and are always attended with Crowds of Informers: Their Hearts and their Purſes are always open to ſuch Vermin, an Accuſation, true or falſe, is the firſt Step to their Favour . . . . . *Dionyſius* would not let his Daughters, once become Women, to trim him, fearing to let the Razor come to his Throat. *Timophanes* was killed by his own Brother

[1] *Baker* 497. A. *Hottoman*. F. G. Whitlock M. 13.

during the Time You ſojourned there. Tho' they were (b) well ſupplied with all the Fruits of the Earth, yet they were ſo much oppreſſed by the King's Troops, and their Horſes; that You could ſcarce be accommodated, in Your Travels, not even in the Great Towns: Where, as You were informed by the Inhabitants, the Soldiers, tho' quartered in the ſame Village a Month or Two, yet they neither did nor would pay any Thing for themſelves or Horſes; and, what is ſtill worſe, the Inhabitants of the Villages and Towns where they came, were (c) forced to provide for them *gratis*, Wines, Fleſh, and whatever elſe they had Occaſion for; and if they

ther *Timoleon* †; *Alexander Pheræus* by his own Wife; and *Sp. Caſſius* by his own Father. Tyrants conſtantly ſee hanging above their own Necks the Sword, which they hold ſtill drawn againſt others; and, by their own hatred againſt others, they meaſure other Men's Minds againſt them. *Lewis* XI. when He felt Himſelf to grow Weaker, ſent for his Son, and gave Him excellent Counſel; amongſt others, to eaſe his Subjects, and reduce the Levies of Money, and to raiſe none, but by the Conſent of the People. He had increaſed the Taxes to Four millions ſeven hundred thouſand Livres; a Sum ſo exceſſive in thoſe Days, that the People were miſerably overburthened: He was infinitely Jealous of his Power, moſt Abſolute in his Will, who pardoned not, and mightily oppreſſed his Subjects. He had cauſed above *Four thouſand People* to be put to Death by divers cruel Torments, and ſometimes pleaſed Himſelf in being a Spectator. The Executions were without Form of Proceſs or Trial, many drowned with a Stone about their Necks; others precipitated, paſſing over a turning Plank, upon Wheels armed with Spikes, and ſharp Hooks; others ſtifled in Dungeons; others, as is inſtanced in Our Text, without any Form of Judgment, and without being heard to defend himſelf, put into a Sack, and, in the Night-time, privately hurled into the River and drowned. *Triſtan*, * ‖ his Creature and *Provôt* of his Houſe, being alone Judge, Witneſs and Executioner [2]. *Lewis* XI. ſays Cardinal *De Retz*, was more crafty, than wiſe: He was in Truth *a genuine Tyrant*; He trampled upon the Laws of the Kingdom and the Lives of his Subjects; pillaged and oppreſſed all Manner of Ways, and followed no Counſel, but that of his Luſt and Caprice. But, what Advantage or Content, what Security or Fame did He draw from his exorbitant Encroachments and Power? No Man ever lived under a blacker Series of Fears, and Cares and Suſpicions; or died in greater Miſery and Terrors; and in his Life and Death and Memory he is equally deteſtable [3]. *Lewis* had that *Sæva ac lenta Natura*, which *Suetonius* [4] aſcribes to *Tiberius*, and which might very well be paraphraſed, by what *Tacitus* ſays alſo of *Tiberius*, "In animo re-" volvente iras, etiamſi impetus offenſionis languerat, memoria valebat ‡." Amongſt other Acts of his Cruelty, nothing ſhews the Odneſs as well as the Greatneſs of it, as what is mentioned by *Mezeray* [5], That when the King had condemned to die *Jacques* of *Armagnac* Duc de *Nemours*, He ordered that the Two Infant Sons of that Duke ſhould ſtand upon the Scaffold, and receive the Blood of their Father, dropping upon their Heads. Fa. *Daniel* tells us, that *Francis* the firſt ſuppreſs'd a MS. Hiſtory of Lewis XI. in which there was a very particular Account of all *Lewis*'s Cruelties. *Dan.* To. 4. p. 414. *Mr. Bayle* v. Art. *Louis* XI. *Triſtan l'Hermite* (Louis) & *Vaquerie*. *Comines*, B. 7. chap. 11. *Gordon*, paſſim. *Fort.* Chap. III. *Sir Robert Atkins* of the Diſpenſing Power, p. 38. A remarkable Account of the Behaviour of *Johannes Romanus*, Advocate to *Lewis* XI. v. *Dr. Burnet*'s Hiſt. of the Rights of Princes 239. *K. James' Premonition* to Chriſtian Monarchs 298.

"Depuis ce temps La, l'extreme Confuſion que les guerres des *Anglois* cauſerent dans le Roy-" aume, y ayant renverſè tous les anciens Ordres, étant dailleurs une choſe tres difficile de con-" voquer de ces grands Aſſembleés contre les courſes & les pillages des Brigands, & chacun ſe trou-" vant plus occupé á ſonger a ſa propre Conſervation qu'a maintenir les Droits du Public, il n'y a " plus en des Veritables Etats. . . . . *Mezeray*." To. 4. Par. Edit. 1676. Ad An. 1358. Roy *Jean* I.

(b) *Terra Frumenti præcipue & pabuli ferax* [6]. The Soil is extraordinary Fruitful, and hath three Loadſtones to draw Riches out of other Countries: Corn, Wine and Salt; in exchange for which, there is yearly brought into *France* One million two hundred thouſand Livres Sterling; the Cuſtom of Salt only being eſtimated in 700,000 Crowns a Year. By the King's Edict no Man can have Salt for his Domeſtic Uſe but what He muſt buy of the King's Officers, at ſuch Prices as they pleaſe to ſell it: Notwithſtanding the Fruitfulneſs of the Soil, miſerable is the Condition of the Peaſant, by Reaſon of the intolerable Taxes and the great and uncertain Rents which are ſet upon them by the Landlords. There are many among them who farm Thirty, Forty Acres of Wheat and Vines, who never drink Wine, or eat good Bread throughout the Year. *Heylin* 175.

(c) *Arctabant*,] "The Oppreſſion on the poor Countryman is very great, not only by the " Taxes, which are unreaſonably levied upon them, but from the King's Cavalry, who do not on-" ly eat them up, but abuſe them licentiouſly; nor are they contented with what grows on the

† Vide Plut. in Vita Timoleonis. * *Scandalous Chron.* 74. ‖ V. Mr. Bayle Dict. Tit. *Triſtan* l'Hermite (Louis) v. ib. Tit. Timoleon. [2] *Gordon* 86. [3] Ib. 57. [4] In *Tib.* c. 57. ‡ V. Tac. An. 6. c. 6. [5] Ad An. 1477. [6] *Mela*, L. 3. c. 2.

they did not like what they found, the Inhabitants were obliged to ſupply them with better from the neighbouring Villages: Upon any Non-compliance, the Soldiers treated them at ſuch a barbarous Rate, that they were quickly neceſſitated to gratify them. When Proviſions, Fuel and Horſe-meat fell ſhort in one Village, they marched away full ſpeed to the next; waſting it in like Manner. They uſurp and claim the ſame Privilege and Cuſtom not to pay a Penny for Neceſſaries, either for themſelves or Women (whom they always carry with them in great Numbers) ſuch as (d) Shoes, (e) Stockings, and other wearing Apparel, even to the ſmalleſt Trifle of a Lace, or Point; all the Inhabitants, wherever the Soldiers quarter, are liable to this cruel oppreſſive Treatment: It is the ſame thro' out all the Villages and Towns in the Kingdom, which are not walled. There is not any the leaſt Village, but what is expoſed to the Calamity, and once or twice in the Year is ſure to be plundered in this vexatious Manner. Further, the King of *France* does not permit any One to uſe (f) *Salt*, but what is bought of Himſelf, at his own arbitrary Price: And, if any Poor Perſon would rather chuſe to eat his Meat without Salt, than to buy it at ſuch an exorbitant Dear Rate; He is notwithſtanding compellable to provide himſelf with Salt, upon the Terms aforeſaid, proportionably to what ſhall be

" Farm, but compel them to go abroad and buy Dainties, which they have not of their own . . . . " No Reaſon or Humanity can reſtrain them from Injury or Violence." Thus *Comines* [7]. The Caſe of Free Quarter, without Conſent of the Owners, in Time of Peace, is no other than Robbery, and thoſe who ſupport them in it, are no better than Thieves. *Mr. Gordon* [8] has it, that the *Comte De Boulain Villiers*, in his *Etat de la France*, ſays, that in ſome Provinces in *France*, the Soil is left uncultivated, and ſeveral Trades and Profeſſions are diſuſed, becauſe the Labour of the Husbandman, and the Skill and Application of the Artiſt, are rendred abortive by rigorous Impoſitions: They chooſe rather to ſtarve in Idleneſs, than to work and ſtarve. V. *Fort.* of Monarchy, p. 22. Note k.

(d) *Sotulares*,] " Subtalares, Calcei. Calceamenti genus, q. ſub talo proprie [9]." A Shoe like a Slipper, with an Heel,

Anonymus de inſtrumentis Sutoris calcearii,

Eſt corium Lether, Sibula, an Awl, Sotularis, a Shoe, allutaq; Cordwane, galla, a laſte . . . . . *Spelm. Somner*, & Gloſſ. ad *Matth. Paris*. ad v.

(e) *Caligis*,] This is the Boot-hoſe, Leg, or ſhort Stocking which Soldiers wear. *Caliga*, was the proper Soldier's Shoe, made in the *Sandal-faſhion*, ſo as not to cover the upper Part of the Foot, tho' it reached to the Middle of the Leg. The Sole was of Wood like our old *Galoches*, or the *Sabots* of the *French* Peaſants; and ſtuck full of Nails [10]. An *Hoſe* (ex Gallic. *chauſſes*, quod à *caliga* Lat.) *Stocking*, or *Trowze*. This laſt ſeems the proper Conſtruction of Our Author, at leaſt of what follows in this ſame Chapter, " non utuntur *caligis* niſi ad genua, diſcooperto reſiduo " tibiarum. V. Moyl's Works, Vol. 2. p. 302.

(f) This Impoſition firſt begun under *Philip* of *Valois* King of *France*, when at War with Our King *Ed.* III. being then in Want of Money, He made a Decree, " That no Man, of what De- " gree ſoever, ſhould ſell or buy Salt, but from his Granaries, which He ſet up (ſeizing all the " Salt into his own Hands, and giving the Proprietors a reaſonable Price for it) which done, He " ſet what Price He thought good upon it, and made every One buy according to the Proportion " of his Family." This then, taken up upon that Neceſſity, has continued ſince, and Time has made this *Gabel* natural to the Subjects of *France*. *Paſquerus* * (*Stephen*) Advocate General in the King of *France* his Chamber of Accounts, obſerves [11], " That a People muſt not eaſily Promiſe any " Thing, tho' but once, which they will not be willing to permit for ever [12]." Our *Hen.* IV. found Means to obtain a Subſidy, which muſt needs have been very extraordinary, ſince it was not to be recorded. But, it is to no Purpoſe to endeavour to bury in Oblivion ſuch Sort of Precedents, which Princes, upon Occaſion, but too frequently, call to Remembrance [13]. So *Tunnage* and *Poundage*, tho' given to *Henry* V. but during his Life, in Reſpect of his Recovery of his Right to *France*; and there was a *Proviſo*, that the King ſhould not make a Grant thereof to any Perſon, nor that it ſhould

[7] p. 508. [8] *Diſc.* p. 59. [9] *Du Freſne* [10] *Kennett*, Ro. Antiqq. 325.
* Natus A. D. 1528. ob. Aug. 31. 1615. *Collier*. [11] In his 2d Book, cap. 6, 7. *Ruſhw.* II. 521. [12] *Fort.* 71. and Note d. 93. Note g. 95. Note h. 72. & ſeqq. 80, 1. & ſeqq. *Mez.* 640. [13] *Rapin*, V. 48. and Note ib.—

be adjudged ſufficient to ſubſiſt the Number of Perſons He has in Family: Beſides all this, the Inhabitants of *France* give every Year to their King the *Fourth Part* of all their *Wines*, the Growth of that Year, every Vintner gives the *Fourth Penny* of what He makes of his *Wines* by Sale. And all the Towns and Boroughs pay to the King yearly, great Sums of Money, which are aſſeſſed upon them for the Expences of his Men at Arms. So that the King's Troops, which are always conſiderable, are ſubſiſted and paid yearly by thoſe Common People, who live in the Villages, Boroughs and Cities. Another Grievance is, every Village conſtantly finds and maintains two (g) *Croſs-bow-men* at the leaſt; ſome find more (h) well arrayed in all their Accoutrements, to ſerve the King in his Wars, as often as He pleaſeth to call them out; which is frequently done. Without any Conſideration had of theſe Things, other very heavy Taxes are aſſeſſed yearly upon every Village within the Kingdom for the King's Service; neither is there ever any Intermiſſion or Abatement of Taxes. Expoſed to theſe and other Calamities, the *Peaſants* live in great Hardſhip and Miſery. Their conſtant Drink is Water, neither do they taſte, thro'out the Year, any other Liquor; unleſs upon ſome extraordinary Times, or Feſtival Days. Their Cloathing conſiſts of (i) *Frocks*, or little ſhort *Jerkins* made of *Canvaſs* no better than

ſhould be any Precedent for hereafter: The Record 3 *Hen.* V. N° 50. *Tunnage* granted to the King for his Life, upon Condition, *&c.* which was the firſt Grant of this Nature for Life, and a leading Grant. *Tonnage* and *Poundage* was an ancient Impoſt upon Merchant's Goods exported and imported, which the Parliament uſually granted to the Kings, to enable them to guard the Seas, and protect the Trade. This Impoſt had, for a long while, been granted to every King, and it had happened ſometimes, that after the Death of a King, his Succeſſor had continued to levy it, till ſuch Time as the Parliament had granted it by an *Act* [14]. It is an Obſervation of *Rapin* [15], that all the unjuſt Methods invented by Princes to extort Money from their Subjects are ſo many Fountains of Oppreſſion, which never dry up; Succeſſors ſeldom failing to follow the ill Example of their Predeceſſors. V. 4 *Inſt.* 32. 2 *Inſt.* 61. *Fort.* 44. *Dugd.* 8. a. v. *Rapin*, II. 365. Coll. to Lord Bacon's Works, p. 36.

(g) *Sagittarios*,] Archers, Croſs-bow-men, formerly called, *Frank-Archers*. *Charles* VII. A. D. 1440. being willing to augment his Infantry, commanded every threeſcore Houſes thro'out *France*, to furniſh a Man arm'd and cloath'd, *in omni Apparatu*; which, in Time of War, receiv'd pay of the King; and, being exempt from all Manner of Taxes, they were called *Frank*, that is, *Free*; but *Lewis* XI. broke this Eſtabliſhment afterwards, and hir'd *Swiſs* in their Room to ſerve him in his Wars. *Uvedale* on *Comines*, p. 64. *Machiavil* 261.

(h) *In omni Apparatu*,] Scutis teliſq; parati ornatiq; [16] cum gladiis Scutati Milites [17] (q. *in procinctu* ſtantes) parè d'armes convenables. *Du Chene.*

(i) *Collobium*,] Tunica demiſſior ſine manicis, A ſhort Coat without Sleeves, uſed by the old *Romans* [18].

——— Et Tunicæ manicas & habent . . . . .] Tunicæ veſtræ habent manicas, quod etiam *Cicero* vituperat— Manicatis & talaribus veſtibus. Tunica, Veſtis *Romanorum* interior fuit, quam habere talarem ac manicatam, Flagitium Veteres exiſtimabant, ſolis enim mulieribus permiſſum id erat [19]. Colobiis utebantur Antiqui, quæ dictæ ſunt ἀπὸ τῦ κολοβῦ mutilus [20]. κολοβὸς γιτὼν opponitur χειριδοτῶ Tunica abſq; manicis, ſed brevioribus, & quæ ad cubitum vix pertinerent [non quidem penitùs ſine manicis, ſed curtis, quæq; brachia cubito tenùs tegebant [21]] poſtmodum propria fuit veſtis Monachorum, *Colobiis* lineis induti, quæ vix ad cubitorum ima pertingunt, nudas de reliquo circumferunt manus. Tabular. prioratus *S. Vicentii Laudun.* An. 1281. Quilibet Monachus habeat ſingulis annis duas *Trocas*, ſeu duo *Collobia*. "*Spelman* has it, ſub veteribus *Romanis* "non reperio, ſub Imperatoribus autem mox innotuit etiam ſanctionibus eorum honeſtatum. De"mum in promiſcuum uſum venit Monachis, Heremitis, Militibus, Colonis." *Du Freſne. Pitiſcus. Spelman.*

---

[14] X. 195. *Ruſhw.* II. 499. 523. *Clar.* I. 206. *Rapin*, XI. 173. [15] III. 298.
[16] *Cic.* pro Cæcinna 44. [17] *Cic.* Philipp. II. Ed. *Genev.* 1615. To. 2, 605. l. 18.— *Delph.* 457. XVIII. *Verb.* Vol. 2. 1095. XLII. *Freigius*, III. 483. v. *Fort.* 91. Note d.
[18] *Serv* ad *Æn.* IX. 616. v. Edit. *Delph.* ib. [19] *Cic.* Orat. II. in *Catilin. Delph.* 109.
[20] *Iſidor.* XIX. 22. [21] *Am. Marcellin.* L. 14. *Pitiſcus.*

common Sackcloth; they do not wear any (k) Woollens, except of the coarſeſt Sort; and that only in the Garment under their Frocks; nor do they wear any Trowſe, but from the Knees upwards; their Legs being expoſed and naked. The Women go barefoot, except on Holidays: They do not eat Fleſh, unleſs it be the Fat of Bacon, and *that* in very ſmall Quantities, with which they make a Soupe: Of other Sorts, either boiled or roaſted, they do not ſo much as taſte, unleſs it be of the Inwards and Offalls of Sheep and Bullocks, and the like, which are killed for the Uſe of the better Sort of People, and the Merchants: For whom alſo Quails, Partridge, Hares, and the like, are reſerved, upon Pain of the Gallies: As for their Poultry, the Soldiers conſume them, ſo that ſcarce the Eggs, ſlight as they are, are indulged them by way of a Dainty. And if it happen that a Man is obſerved to thrive in the World, and become Rich, he is preſently aſſeſſed to the King's Tax, proportionably more than his poorer Neighbours, whereby he is ſoon reduced to a Level with the reſt. This, or I am very much miſtaken, is the preſent State and Condition of the *Peaſantry* of *France*. The (l) Nobility and Gentry are not ſo much burthened with Taxes. But if any one of them be impeached for a State-Crime, tho' by his known Enemy, it is not uſual to convene him before the Ordinary Judge, but he is very often examined in the King's own Apartment, or ſome ſuch private Place; ſometimes only by the King's Purſuivants and Meſſengers: As ſoon as the King, upon ſuch Information, ſhall adjudge him to be Guilty, he is never more heard of; but immediately, without any other formal Proceſs, the Perſon ſo accuſed, and adjudged Guilty, is put into a Sack, and by Night thrown into the River by the Officers of the *Provoſt-Marſhal*, and there drowned: In which Summary Way you have heard of more put to death, than by any Legal Proceſs. But ſtill, according to the Civil Law, "What "pleaſes the Prince has the Effect of a Law." Other Things of a like irregular Nature, or even worſe, are well known to You, during Your Abode in *France*, and the adjacent Countries; acted in the moſt deteſtable barbarous Manner, under no Colour or Pretext of Law than what I have already declared. To be particular would draw out our Diſcourſe into too great a Length. Now it remains to conſider what Effect that *Political Mixt Government*, which prevails in *England*, has, which ſome of Your Progenitors have endeavoured to abrogate, and inſtead thereof to introduce

(k) *Pannus*] Is taken for mean Cloathing. *Pannicularia*, in the *Digeſt* [22], ſignifies Raiment and Things of ſmall Value. "*Pannoſus*, Qui ſordidâ veſte, craſſo *panno* viliq; opertus eſt, nec "hoc, niſi de paupere, dicitur. Permutato Regis habitu, *pannoſus*, ſarmenta collo gerens, caſtra "Hoſtium ingreditur [23]."] *Pannoſus*. h. e. laceris veſtibus. The People of *France* live at very little Expence, by reaſon of their great Plenty, and every Body hath ſomething of his own. Their Cloathing is coarſe, of very cheap Stuff; they Uſe no kinds of Silks, neither the Men nor the Women; for if they ſhould, they would be obnoxious to the Gentry, who would certainly be even with them. *Machiavil* 259. v. Mr. *Addiſon*'s Works 4to, IV. 149, 157.

(l) The Crown receives no other Advantage from the Barons, than in the Revenue for *Salt*; and never Taxes them but upon Extraordinary Occaſions [24]. The Property in *France* being in the Nobility and Gentry, which are the Hands by which He manages his Force both at home and abroad, it would not have been eaſy or ſafe for the King to take away their Eſtates. *Plato Red.* 92. v. *Fort.* 93.

[22] In L. *Divus* de Bonis Damnatorum. — *Pacii* Iſagog. p. 427. *Calvin* ad v. [23] *Juſtin.* L. 2. c. 6. [24] *Machiavil* 259.

troduce the *Civil Law*; that, from the Conſideration of both, You may certainly determine with Your Self which is the more eligible, ſince (as is above mentioned) the *Philoſopher* ſays, "That "Oppoſites laid one by the other, do more certainly appear;" or, as more to our preſent Argument, "Happineſſes by their Contraries "are beſt illuſtrated."

CHAP. XXXVI.

The Comparative Advantages in England, *where the Government is of a mixt Nature.*

IN *England* no one (a) takes up his Abode in another Man's Houſe, without Leave of the Owner firſt had: Unleſs it be in *Public* (b) *Inns*; and there he is obliged to diſcharge his Reckoning, and make full Satisfaction, for what Accommodations he has had, ere he be permitted to depart. Neither is it lawful to take away another Man's Goods without the Conſent of the Proprietor, or being liable to be called to an (c) Account for it. No Man is (d) concluded, but that he may provide himſelf with *Salt*, and other Neceſſaries for his Family, when, how and where he

4 pleaſes.

(a) *Perendinare*] To take up an Abode for two Days together. *Perendiè*. μεταύειον, εἰς τεἰτλω. *Perendinus*, the third Day from hence.

(b) The 13 R. II. 8. aſcertained the Gains of *Victuallers*, and Hoſtlers, what they were to take for Hay and Oats over and above the Market-price. This laſt Clauſe of ſaid Statute, *viz.* the main Scope of good-uſing Gueſts, is retained by a *Subſequent Statute*. Inn-keepeers muſt take reaſonable Prices, make good Horſe-bread, and full Weight, under a Penalty [1]. Exaction of *Inns* is puniſhable by the Common Law in *Leets*, as being *contra Publicam Pacem & Fidem regni* [2], an Enormity which diſhonoureth the Government. W. An *Inn-keeper*, or *Alehouſe-keeper*, may juſtify the detaining of an Horſe, or other Thing, from me till I have paid him his Reckoning. *Hawkins*'s P. C. B. 1. c. 78. §. 8. — c. 80. §. 6. *Croke*, James 609. See 11 & 12 W. III. 15. §. 2. *Wood*, C. L. 529. *Salkeld*, I. 387. *Dalton* (laſt Edit.) p. 30. & alibi.

(c) Tho' this be the **Common Law**, and confirmed to the Proprietor by ſeveral Statutes, the Kings of *England* have conſented to Laws of Reſtriction againſt themſelves, as by *Stat.* 28 *Ed.* I. 2. by the *Statute* of *Proviſors*, &c [3]. See the *Statutes* in the Margin, which make it Felonious to take from any Man what He is lawfully poſſeſt of, without his Conſent, tho' it be for the King's own Uſe [4]. So the *Mirrour* [5]. "Into the Offence of Robbery all thoſe fall, who take other "Mens Goods by Commandment of the King, or any Great Lord, without the Owner's Con-"ſent." The Common Law has ſo admeaſured the Prerogative of the King, as He cannot take nor prejudice the Inheritance of any [6]. The King's Court was originally ſupplied with Neceſſaries from the *Ancient Demeſnes* of the Crown, in reſpect whereof, the Tenants of thoſe Lands had and have many Privileges: This Method being found to be inconvenient, was, by Degrees, diſuſed; and afterwards the King uſed to appoint *Purveyors*, to buy in Proviſions for his Houſhold, who claimed many Privileges, and to have the Preemption of all Victuals: The Laws concerning *Purveyors* having been found, by Experience, not to have ſufficiently provided againſt the Oppreſſion of theſe Officers, and ſeveral Counties having found themſelves obliged to ſubmit to ſundry Rates, Taxes, and Compoſitions, to redeem themſelves from ſuch Vexations, occaſioned the **Statute** *Charles* II [7]. "Nihil tam proprium Imperii eſt, quàm le-"gibus vivere. *Code* L. 3. Lib. 6. Tit. 3. *Tyrrell*, D. 2. p. 124. *Spelm.* Reliq. 248. v. *Sir Robert Atkins*, p. 35. *Whitl.* H. 229.

(d) Generally, all Monopolies are againſt *Magna Charta*, becauſe they are againſt the Liberty of the Subject, and againſt the Law of the Land. 2 *Inſt.* 47, 63. *Whitl.* H. 281.

---

[1] 21 *Jac.* 21. [2] 18 *Ed.* II. *Readings* on *Statt.* II. 169. v. 23 *E.* 3. c. 6. *Vaughan*'s Reports 343. [3] 25 *Ed.* III. *Raſtall*, Fo. 99. *Keb.* 121. §. III. 36 *Ed.* III. 2 & 6. 7 *R.* II. 8. 20 *Hen.* VI. 8. [4] V. 20 *R.* II. 5. 2 *Inſt.* 35, 170, 223, 543. [5] C. 1. §. 10. v. *Ruſhw.* II. 595, 596. [6] 2 *Inſt.* 36, 63. v. *Hawkins*, I. 47. [7] 12 C. II. 24. v. 13 & 14 C. II. 20. 1 *Jac.* II. 10. *Cowell*, **Pourveyor**, &c. *Dudg.* 19. a. 37. a. *Ruſhw.* II. 556. v. Rot. Parl. H. 4, n. 108. *Act purgarder Les Leys*. *Tyrrel*, D. 2. p. 125.

pleaſes. Indeed the King, by his *Purveyors*, may take for his own Uſe Neceſſaries for his Houſhold, in a reaſonable Price, to be aſſeſſed at the Diſcretion of the *Conſtables* of the Place, whether the Owners will or not: But the King is obliged by the Laws to make preſent Payment, or at a Day to be fixed by the Great Officers of the King's Houſhold. The King can't deſpoil the Subject, without making ample Satisfaction for the ſame: He can't by himſelf, or his Miniſtry, lay Taxes, Subſidies, or any Impoſition, of what Kind ſoever, upon the Subject: He can't alter the Laws, or make new ones, without the Expreſs Conſent of the whole Kingdom *in Parliament aſſembled:* Every Inhabitant is at his Liberty fully to uſe and enjoy whatever his Farm produceth, the Fruits of the Earth, the Increaſe of his Flock, and the like: All the Improvements he makes, whether by his own proper Induſtry, or of thoſe he retains in his Service, are his own to uſe and enjoy without the Lett, Interruption, or Denial of any one: If he be in any wiſe injured, or oppreſſed, he ſhall have his (e) *Amends* and Satisfaction againſt the Party offending: Hence it is, that the Inhabitants are (f) Rich in Gold, Silver, and in all the Neceſſaries and Conveniencies of Life. They drink no Water, unleſs at certain Times, upon a Religious Score, and by Way of doing Penance. They are fed, in great Abundance, with all Sorts of Fleſh and Fiſh, of which they have Plenty every where; they are cloathed thro'out in good Woollens; their Bedding and other Furniture in their Houſes are of Wool, and that in great Store: They are alſo (g) well provided with all other Sorts of Houſhold Goods, and neceſſary Implements for Husbandry: Every one, according to his Rank, hath all Things which conduce to make Life Eaſy and Happy. They are not ſued at Law but before the Ordinary Judge, where they are treated with Mercy and Juſtice, according to the Laws of the Land: Neither are they impleaded in Point of Property, or (h) arraigned for any Capital Crime, how heinous ſoever, but before the King's Judges, and according to the (i) Laws of the Land. Theſe are the Advantages conſequent from that *Political Mixt Government* which obtains in *England*: From hence it is plain, what the Effects of that Law are

(e) *Emendas*] Amends. " *Emenda*, Pecuniaria mulcta, compenſatio damni, quæ arbitrio Ju-
" dicis irrogatur. Differt mulcta ab *Emenda:* Mulcta Judici, *Emenda* Parti læſæ datur. In ſpe-
" culo Saxonico [8]. *Emenda* definitur Satisfactio. Apud *Gallos* ſecùs obtinuit. Nam *Emenda* Judicem
" ſpectat, vulgò *Amende* [9]. *Emenda* 1077, 23.] Regi quales *Emendas* faceret, ſc. compenſationem: Amends *Angli* dicunt, à *Gallico Amend.* Frequentiſſime vox occurrit, ut, Nos ab eo capiemus *Emendam* [10] Amends. Compenſatio Injuriæ vel Damni, vel per pecunias, vel Beneficia, vel ſubmiſſam Confeſſionem. Expiatio. *Skinner, Spelm. Somner,* ubi plurima ad hanc rem. *Wilkins.* Gl.

(f) " Boni aſſiduiq; Domini referta cella Vinaria, Olearia, etiam penaria eſt. Villaq; tota
" locuples eſt: abundat porco, hædo, agno, gallina, lacte, caſeo, melle." *Cic.* de Sen. XVI. Edit. *Elz.* p. 161.

(g) *Huſtilimentum*] Supellex Domeſtica, *Utenſile,* unde fortè vox nata. *Du Freſne.*

(h) V. ante c. XXVII. Note a.

(i) The Stat. *Magna Charta* [11] has it, " No Freeman ſhall be taken or impriſoned, or be
" diſſeiſed of his Freehold, or Liberties, or Free Cuſtoms, or be outlawed, or exiled, or any
" otherwiſe deſtroyed, nor We will not paſs upon him, nor condemn him, but by Lawful Judg-
" ment of his Peers, or by the Law of the Land. We will ſell to no Man, We will not deny
" or defer to any Man, either Juſtice or Right.

[8] L. 1. art. 53. — 2, 6. [9] *Du Freſne.* [10] Gl. ad *Matth. Pariſ.* & ib. 215, 48.
[11] C. 29. 2 *Inſt.* 45.

are in Practice, which ſome of your Anceſtors, *Kings of England*, have endeavoured to abrogate: The Effects of that other Law are no leſs apparent, which they ſo zealouſly endeavoured to introduce among us; ſo that you may eaſily diſtinguiſh them by their Comparative Advantages; what then could induce thoſe Kings to endeavour ſuch an Alteration, but only Ambition, Luxury, and Impotent Paſſion, which they prefer'd to the Good of the State. You will pleaſe to conſider in the next Place, *My Good Prince*, ſome other Matters which will follow to be treated of.

CHAP. XXXVII.

Concerning the Regal and Political Government.

SAint (a) *Thomas*, in the Book which He addreſſes to the King of *Cyprus* (de regimine Principum) ſays, (b) "That a King "is given for the Sake of the Kingdom, and not a Kingdom for "the Sake of the King." Conſequently all Kingly Power ought to be

4

(a) This Piece, *de Regimine Principum*, in the Order of his Works, is in the 17th Tome, among his Opuſcula. *Thomas Aquinas* was born at *Campagna*, in the Kingdom of *Naples*, A. D. 1224. He came young to *Naples*, afterwards He ſtudied at *Cologne* and *Paris*: He was called, *The Angelic Doctor, and Eagle of Divines*. The moſt Illuſtrious Perſons of his Time were ambitious of his Friendſhip, and put a very high Value upon his Merit, ſo that they offered him Biſhopricks; in particular the Archbiſhoprick of *Naples*, which he refuſed when *Clement* IV. preſented him to it. "Libri, quos *de Regimine Principum* ad *Cypri* Regem conſcripſit, oſten-"dunt quod illuc uſq; ſuarum Virtutum Fama, Nominiſq; Reverentia penetraverit; quid autem "Libris illis huic Regi conſcribendo occaſionem præſtiterit, nondum mihi compertum eſt, niſi "quòd crediderim ſuarum Virtutum Famam, gratum eum & amicum tunc illi Regi, tunc alijs "multis ipſum reddidiſſe. Autor Vitæ ejus." He died 1274. His Works are in 18 Vol. Fol. printed at *Lyons* 1556. — at *Rome* 1570. — *Antwerp* 1612. W. *Platina* 274, 306. *Du Freſne*'s Index; v. ante Cap. IX, Note h. v. *Plin.* Pan. c. 65. in ipſo initio.

(b) GOD, in the firſt Inſtitution of Government, having a Regard to the Whole, tho' He place the Power of Order and Juriſdiction in One, or a few; yet He does it for the Sake of thoſe many, whoſe Good therein he chiefly intends. Queen *Elizabeth* [1], in her Speech to her Laſt Parliament, concerning Monopolies, ſays, "She knew the Commonwealth was to be govern-"ed for the Good of thoſe committed to her, and not of herſelf, to whom it was intruſted; "that ſhe ought to govern for the Publick Good, without any Regard to her own particular." To the ſame Purpoſe King *James* I. [2] "acknowledges Himſelf to be advanced for his People, "and not They for Him." What can be more abſurd than to ſuppoſe it to be the higheſt Crime to attempt to deſtroy one Man, for no other Reaſon but that He is King, and yet not to ſuppoſe it the higheſt Crime to deſtroy that People, for whoſe Benefit alone He was made King, and for whoſe Sake indeed there ever was ſuch a Thing as a King in the World.

To abuſe Power to the enſlaving and deſtroying of Mankind, and to the ſerving ſuch Purpoſes, the preventing whereof is indeed the only good Reaſon for which Power is truly deſirable, is the greateſt Weakneſs and Abſurdity in the World. To employ great Power and Riches in conquering and ſubduing many Nations, in cauſeleſsly oppreſſing Multitudes of People, and ſubverting the common Rights and Liberties of Men, is the greateſt Folly, as well as the greateſt Wickedneſs, imaginable: And nothing can be more weak and contrary to Reaſon, than to call that Ambition by the Name of Glory and Greatneſs, which is really the moſt inglorious and the moſt diſhonourable thing in Nature. GOD is the Supreme Governor of the World, poſſeſſed entirely of abſolute and uncontroulable Power: Yet He makes uſe of that Power to no other End but to preſerve and ſupport and do good to all his Creatures, according to their ſeveral Natures and Capacities [3]. As the People were not made or ordained by GOD only for Kings to uſe them as Slaves, or meer Brutes, ſuch being the Caſe, there can reaſonably be no Queſtion but that, for the Preſervation of their Natural and Civil Liberties, and Properties, conferr'd on them by the very Conſtitution of the Government, not by the meer Grace and Bounty of former Kings, they may not only take up Arms, but drive out ſuch a Tyrant, who ſo invades and inſults them, if they

[1] *Camd.* El. B. 4. p. 200. *Kennet*, II. 642. *Eachard* I. 898. *Rapin*, IX. 215. [2] In his True Law of free Monarchies, Fol. 195. v. *Kennet*, II. 668, 672. *Rapin*, IX. 268.
[3] Dr. *Clark*'s Serm. publiſhed by Himſelf, 8vo. Lond. 1724. p. 24.

be applied for, and to centre in the Good of the Kingdom or State: Which, in Effect, conſiſts in the Defence of the Subject from the Incurſions of other Nations, and in the Protection of their Lives and Properties from Injuries and Violence as to one another. A King who cannot come up to this Character, is to be looked upon as *Weak*: But if, thro' his own Paſſions, Poverty, or want of OEconomy, He be in ſo diſtreſt a Condition, that He can't keep Hands off from ſeiſing on his Subjects Property; by Means whereof he ſo (c) impoveriſhes them, that their Eſtates are not ſufficient to maintain both: In how much a more *Impotent* Deſpicable Condition may We juſtly reckon ſuch a Prince to be, than if He were barely unable to defend them againſt the Injuries of others? Such a Prince indeed is not only to be called *Weak*, but (d) *Weakneſs* its ſelf; and is far from being a proper Head of a *Free People*, whilſt He labours under ſuch Preſſures and Obligations. On the other Hand, He may well be eſteemed a *Free and Powerful Prince*, who can protect his Subjects, as well againſt a Foreign Force as againſt one another: Their Properties are ſafe with reſpect to their Neighbours and Fellow-Citizens, not liable to the Oppreſſion or Depredation of any one; not even tho' the Prince

they are able of themſelves to do it, or elſe may beg any Foreign Aſſiſtance to ſupport their Cauſe. (*Tyrrel Bibl. Polit.* D. 14. p. 71. this Dialogue is a Parallel between King *Charles* I. and *James* II. and ſeems a Comparative Apology in Behalf of the former.) When once the Common Good of the Subject ceaſes to be the main End of the Governors, the Government then ceaſing to be GOD's Ordinance, degenerates into Tyranny; which may be always lawfully oppoſed by a Free-born People, who at firſt agreed to be governed, not as Slaves, but as Subjects [4]. It was allowed by the *Civil Law* for any Judge, or Prætor, *reſcribere Principi*, if He were by Him commanded to act contrary to any former Law or Edict of the Emperor [5]. *Non eſt Rex ubi dominatur Voluntas, & non Lex* [6]. — " 'Tis impoſſible to think them as much Kings when they " deſtroy and oppreſs their People, as when they protect and preſerve them by governing accord- " ing to the Laws of the Kingdom [7]." Among the Laws of King *Edward*, which were confirmed by *William* I. this is one, " Rex, Qui eſt Vicarius Summi Regis ad hoc eſt conſtitutus ut " regnum terrenum & populum Domini, &, ſuper omnia, ſanctam veneretur Eccleſiam, & ab " Injurijs defendat & maleficos ab ea evellat & penitùs diſperdat, quod niſi fecerit nec nomen " Regis in eo conſtabit [8]." — In the ſame Senſe *Bracton* is to be underſtood, " *eſt enim Corona* [9]. i. e. " It is the Royal Office, or Dignity, to do Juſtice and Judgment, and to maintain Peace, " without the Obſervation of which his Crown or Royal Dignity cannot hold or conſiſt, *ad hoc electus eſt Rex & conſtitutus, ut faciat Juſtitiam Univerſis* [10]. The King is King by the Fundamental Law of the Land; and by the ſame Law, and no other, the meaneſt Subject enjoys the Liberty of his Perſon and Property in his Eſtate, and it is every Man's Concern to defend this to his utmoſt, as well as the King in his lawful Rights and Prerogatives. — Our Conſtitution is a *limited mixt Monarchy*, where the King enjoys all the Prerogatives neceſſary to the Support of his Dignity and Protection of his People, and is only abridged from the Power of injuring his own Subjects. No Man can be impriſoned unleſs he has tranſgreſſed a Law of his own making, nor be tried but by his own Neighbours. . . . . " Nulla eſt Securitas, ſed omnia ſunt incerta, cum " à jure diſceditur, nec confirmari quicquam poteſt quod poſitum eſt in alterius Voluntate, nè di- " cam libidine [11]." Ita ſe Rempub. geſturum ut ſciret Populi rem eſſe, non propriam. *Æl. Spartianus* in Vita *Adriani*. Var. c. 8. v. *Fort.* Pref. III. and p. 55. *Tyrrel.* Bibl. Pol. D. 1. p. 63. D. 2. p. 91. *Hottoman*, F. G. cap. 1. & p. 105. & ſeqq. *Rapin*, V. 338. *Kennet*, I. 513. b. *Gordon* 52, 56, 7.

(c) It is a *Maxim*, that a King is never Rich when his Subjects are Poor. 2 *Inſt.* 578.

(d) *Buchanan* * has ſeveral Inſtances to the Purpoſe, in Illuſtration of this Paſſage, as " im- " potentum Divitum faſtus] *Impotens* hìc non ſignificat invalidum, ſed eum, qui iræ, aut alijs " ſuis cupiditatibus moderari non poteſt. *Chytræus*. Vis *impotentis* dira ſuperbiæ. Tyrannis " *impotens* hoſtis impij. Legum habenis *impatiens* regi] ſignificat Hominem ωνδ' ἄρχειν ωνδ' " ἄρχεσθ πειθυκότα. *Chytræus*. Vana *impotentia*. *Inſolens* lævitia. *Impotens* imperium. Crude- " lis hoſtis me eripe *impotentiæ*. Pſ. 17, 14. — 19, 14 — 31, 9. — 50, 17. — 53, 8. — 56, 3. — 66, 12. — 69, 15. v. ante c. 14. Note c.

---

[4] *Tyrrel* Bibl. Polit. 801. [5] Ibid. 839. [6] *Bracton.* [7] *Tyrrel*, D. 9. 669.
[8] *Spelm.* Concil. L. L. Guil. c. 6. Scriptt. poſt *Bed.* 604. *Wilkins*, 200, 17. *Stillingf.* 12.
[9] L. 2. c. 24. §. 2. [10] *Bracton* 107. a. §. 3. [11] *Aquinas*, ubi ſup. p. 18.
* Paraphr. *Pſalm.*

Himſelf ſhould have Paſſions and Occaſions of his own to gratify: For who can be more *Powerful* or *Free* than that Prince who can't only bring others within due Bounds, but can alſo get the better of his own Paſſions? Which that Prince can, and always does, who governs his People in the (e) Political way. So that Experience ſufficiently ſhews You, *My Prince*, that thoſe (f) Anceſtors of Yours, who were ſo much ſet upon aboliſhing the *Political* Form of Government, had they been able to have compaſs'd it, would not only have been diſappointed of their Aim and Wiſh of enlarging their Power thereby; but would, by this Means, have expoſed both themſelves and the whole Kingdom to far greater Miſchief and more imminent Danger. Nevertheleſs, what We have ſhewn from the Experience of the ill Effects of a *Deſpotic Government*, which may ſeem to check and leſſen the Power of an *Abſolute Prince*, do in Reality rather proceed from a want of due Care, and from Misbehaviour, than from any Defect in that Law by which He governs. And therefore the *Regal* Power or Dignity it's ſelf is not hereby leſſened: Since the Power, whether of an Abſolute Prince, or of one limited by Laws (as I have evidently ſhewn in the aforeſaid *Treatiſe* of the *Law of Nature*) is equal. But, that the Power of an Abſolute Prince is attended with much more Difficulty in the Exerciſe of it, and with leſs Security both to King and People, the foregoing Obſervations do, I think, ſufficiently demonſtrate. So that a Wiſe Prince would not wiſh to change the *Political Form* of Government for an *Abſolute*: And for the ſame Reaſon it is, that *St. Thomas* is ſuppos'd to wiſh, that all the Kingdoms and Nations of the World were governed in the *Political* Way.

(e) Our A. in the Ninth and following Chapters gives the Diſtinction betwixt the *Regal* and *Political* Forms of Government; that *That King* whoſe Government is Political cannot change the Laws without the Concurrence and Conſent of the Subjects, neither can He charge the Subject with any Taxes or other Burthens whatſoever, without the ſame Conſent. — He alſo gives the Origin of both Sorts of Government. — That the Prerogative conſiſts in the Protection of the Subject from all Foreign Force, from every Injury and Inſult which one Subject may be Guilty of againſt another, and in a due and impartial Execution of the Laws, and in a very lively Manner expoſes the Character of that Prince, who, thro' his Ambition and inordinate Paſſions, reduces Himſelf to a State of Poverty and Inability to anſwer the Ends of Government. He has ſeveral Chapters to the ſame Purpoſe in his *Opuſculum de Natura Legis Naturæ*, which are performed with a great deal of Spirit.

There are ſeveral *Maxims* in the Law which help very much to explain the Nature of that *Political* Form of Government which obtains in *England*, and which juſtify the Truth of Our Excellent Conſtitution. "That a King of *England* can do no Harm" [12] is moſt certain, becauſe He is circumſcribed with Laws which are calculated for the Good of the Subject. *Poteſtas Regia eſt facere Juſtitiam* [13], that is, to take care that the Laws be duly put in Execution, and that Right be done. Another Maxim, in Affirmance and Explanation of the former, is, *Nihil aliud poteſt Rex quam quod de jure poteſt* [14]. One other Maxim is, "That the **Common Law** hath "ſo admeaſured the Prerogatives of the King, that they ſhould neither take away nor prejudice "the Inheritance of any." The Definition of *Prerogative* is a conſiderable Part of the Common Law, by which Power is put into the Hands of the Prince for the Preſervation of his People. And if it be not for the Good of his Subjects, it is not Prerogative, not Law; for Our Prince has no Authority of his own, but what was firſt intruſted in him by the Government, of which he is Head: Nor is it to be imagined that they would give him more Power than what was neceſſary to govern them. *Plato Red.* 118. 2 *Inſt.* 63. 3 *Inſt.* 84. v. *Atkins'* D. P. 38. *Rapin*, XI. 463.

(f) Probably *Edward* II. or *Richard* II. may be here intended. The former being ſeduced by *Pierce Gaveſton* a Native of *Gaſcoigne*, laboured to bring in ſuch Abſoluteneſs as our Laws do not approve of. He was put to death as a Subverter of the Laws, and a Publick Traitor to the Kingdom [15]. V. *Petyt*, Pref. p. 54, 5. c. 14. Note a.

[12] 1 *Inſt.* 19. b. [13] 2 *Inſt.* 374. [14] Ibid. 187. [15] *Tho. Walſing.* inter Angl. Norm. 101, 48. — Ibid. 501, 6. *Kennett*, the ſame Reign, and p. 204.

CHAP. XXXVIII.

The Prince desires the Chancellor to proceed.

Prince.] YOU will, I hope, excuse it, *my Chancellor*, that while I have been proposing my Doubts and Queries, I have obliged You to digress so far from the main Point. What You have explained by the By, has been very Instructive, tho' it may have a little taken You off from Your Principal Design; I now earnestly desire You, forthwith to proceed; and, as You at first set out and promised me, that You would please to declare some other Cases, in the Decision whereof the Laws of *England*, and the *Civil Law* of *Nations* observe a different Method of Procedure.

CHAP. XXXIX.

Of the Legitimation of Children born before Matrimony.

Chancellor.] SIR! In Obedience to Your Request, I will endeavour to lay before You some other Cases, in which the Laws aforesaid observe a different Determination: Which is preferable I will not take upon me to say, but shall leave it to your own Judgment. "The Civil Law" legitimates, a(23), Children "born before Matrimony, as well as after, and qualifies them to "suc-

a(23) *Prolem ante Matrimonium,*] This Point of Civil Law, is Text in *C. tit. de Naturalibus lib. l.* 10. *cum quis. Quomodo* (says *Justinian*) *non est iniquissimum ipsam stirpem secundæ posteritatis priorem quasi injustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt justi filii, & nomen & ordinem consecuti.* For the Birth of the First is often cause of the Marriage following. But it is limited by some Doctors, that the Woman be before *in concubinatu, in familia retenta*, that there be *indubitatus affectus sicut in uxore, &c.* as you may see in *Bartol. ad finem ff. de Concubinis. Mynsinger. ad Instit. de Nuptiis, § Aliquando. Gothofred. ad Novell.* 89. *cap.* 15. The Canon Law agrees with the Civil in this Matter, as is shewn in an Epistle of Pope *Alexander* 3. to the Bishop of *Excester* in *Ext. tit. Qui filii sint legit. c.* 6. *Tanta est vis.* Seld.

Proles is a Word in a large Extent, a Common Title of the Proceed of any Creature; and it may be inferr'd from Our Text, that Illegitimate Children are as no Children. The old *Imperials*[1] make no other Difference between a *Concubine* or *Vice-conjux*, and a *Wife*, but Honour and Dignity; and by them also some Kind of Inheritance is allowed to such Bastards as are *Naturales Liberi*, that is, gotten on *Concubines* . . . . . By the *Imperials*; and by the General Law of *France*, a Child born before Marriage, and, after, the Parties intermarry, such Child becomes wholly legitimate. Mr. *Waterhouse* observes that it is the *Canon*, rather than the *Civil* Law, which makes Illegitimate Children inheritable, if their Parents marry after, and there be no other Issue born after Marriage. The *Civil Law* has a Way of Legitimation of them, as Our Law has, by **Act of Parliament.** W. One of the Ways by which the Right of a Father accrues, is by Legitimation, which is a *Legal* Act. This was either by offering and entring them in the *Curia*, or Ward-Meetings, or by subsequent Marriage with a *Concubine*, or else by the *Rescript* of the *Emperor*. [This Power of the Prince is not practised at this Day, neither can I apprehend that there is any Thing like Legitimation * *per Oblationem Curiæ*; in Use with Us, or Our Neighbours.] As to Legitimation by subsequent Marriage with a *Concubine*, It was endeavoured to be made part of the Law of *England*, but rejected in Parliament[2]. The *Canon* Law allows further than the *Civil* Law, and suffers a subsequent Marriage, with one that did not live as a *Concubine*, to be a Legitimation[3]; And

[1] *Seld.* III. 1335, 6. & Nott. ib. v. *Domat.* II. 11. X. * *Grot.* de jure, L. 2. c. 7. VIII. 3. v. *Barbeyrac*, ib. (6) [2] V. 26 *Hen.* III. 9. Pref. 8 Co. 7. a. *State Tracts*, I. 588.
[3] l. Conquestus est Tit. Qui filii sunt Legitimi.

" ſucceed in the Inheritance of the Parents." The Law of *England* does not admit Children born before Matrimony to take by Heirſhip. It calls ſuch an Off-ſpring *natural*, but not *legitimate*. In the Caſe before Us, the *Civilians* extol their Law, becauſe they ſay, that it is an Encouragement to Marriage, by which the Sin is done away, and ſo the Souls of both Parties are preſerved from Damnation. They alledge further, that the Preſumption is, that ſuch was the Intention of the Parties, as it were, by Way of Contract, at the Time of committing the Act; the ſubſequent Marriage demonſtrates as much. Moreover, the Church admits and allows them for Legitimate: Theſe, I think, are the chief Arguments, by which they juſtify and defend the *Civil Law*. To this the Learned in our Law reply, that the Sin of *Concubinage*, in the Caſe propoſed, is not purged by the ſubſequent Marriage, tho' in ſome Meaſure, the Puniſhment of the Parties offending may be mitigated. (b) They urge further, that the Guilty in this Caſe are the leſs Penitent for their Offence, in Proportion as they find the Laws more favourable to it, upon which Conſideration they likewiſe become more apt to repeated Acts of this Kind; and ſo act in Contradiction both to the Commands of GOD, and the Ordinances of the Church. So that this Law not only Shares in the Guilt of the Offender by abetting ſuch a Practice, but is quite beſide the Nature and Definition of a good Law, " which (as has been already " obſerved) is an Holy Sanction commanding Things which are ho- " neſt, and forbidding the contrary." Now, the *Civil Law*, in the Caſe before us, rather prompts on the Party to do Things which are diſhoneſt. (c) Nor is it a ſufficient Defence of this Law, to ſay, that the Church admits ſuch Iſſue for Legimates. Since Our Holy Mother the Church diſpenſes with many Things which ſhe does not allow of to be done. So, the *Apoſtle* diſſolved the Reſtraint upon Virgins, by Way of Diſpenſation; when, at the ſame Time, He adviſed the contrary, and would rather that all Men

And this is the Law in *Germany* [4], and allowed in *Holland*, with a Diſpenſation [5]. A *Baſtard* is One Born out of Marriage: He ſhall never inherit, or be Heir to any One: In Law, He is *q. nullius filius* [6], no Man's Iſſue; He can have no Heir but of his own Body. A Baſtard having gotten a Name by Reputation may purchaſe by that Name to him and his Heirs, tho' He can have no Heirs but of his Body. After a Baſtard is born and hath gained by Time a Reputation that He is the Son of B. or known by the Name of a Son, then a Remainder limited to him by the Name of the Son of his reputed Father, is good. He cannot take by the Name of *Iſſue* before He is born, tho' the Limitation be to the *Illegitimate Iſſue*; Becauſe He could not take at the Time when He was born, by that Limitation. Tho' a Baſtard may be a reputed Son, yet He is not ſuch in Conſideration whereof, or of Natural Affection towards him, an Uſe may be raiſed: He is not a Child within the **Stat. of Wills.** [7] In the Caſe of *General Baſtardy*, upon Iſſue joined, it muſt be tranſmitted by the King's Writ to the Biſhop, who is to try it in his *Conſiſtory Court*, not according to the *Canons*, but purſuant to the Rules of the *Common Law:* By the *Canons* He is no Baſtard who is born before Marriage, if the Parents afterwards intermarry; but, 'tis otherwiſe by the *Common Law*, for ſuch a Child is a Baſtard [8]. Our Law repudiates all Vage Luſt, as the Affront of Marriage, and diſhonours the Iſſue. Children before Marriage were never allowed of here by Law to inherit, but the contrary aſſerted. So *Glanvil*, *L.* 7. c. 15. *Bracton*, L. 2. c. 29. *Fleta*, L. 6. c. 38, 9. 2 *Inſt.* 96. & ſeqq. *Cowell*, Inſt. 143. 198.

(b) *Quod non vetat Lex, id mandat.* Unleſs Iſſue come (which ſuch do not expect, who are ſo lewdly acted) Marriage would not enſue. W.

(c) " There is no Argument from the Diſpenſation and Permiſſion of a Thing to the Legitima- " tion of it: Many Things are ſuffered for Reaſons of State, &c. to gratify emergent Neceſſities, " which are not otherwiſe tolerable." *Quædam tolerantur quæ non approbantur.* W.

---

[4] *Gail.* 2. Obſer. 141. n. 8. [5] *Vinii* Com. *Wood.* J. L. 46. [6] 1 *Inſt.* 3. b. 123. a. [7] 32 *Hen.* VIII. 1 *Wood*, ubi ſup. 64, 5. [8] *Nelſon* 79. v. 1 *Inſt.* 244. a.

were even as (d) Himſelf. And far be it that ſo good a Mother ſhould deny her Compaſſion to her Sons, whoſe Caſe is ſo much the more deplorable, becauſe they often fall into this Sin, being betrayed by that Encouragement which the *Civil Law* allows it: And the ſubſequent Marriage is a good Argument to the Church, of their being truly penitent for what is paſt, and of their Reſolution to contain for the Future. The Law of *England* has a quite contrary Effect: It does not give any Encouragement to ſuch a Criminal Action, neither does it ſcreen the Offenders, but lays a Reſtraint upon them, threatens and inflicts a Puniſhment, that they may not offend. The Inclination is predominant enough of it ſelf, without any other Incitements, It rather wants a Curb. The Propenſions to Luſt are very importunate and conſtant: And Mankind, ſeeing they cannot be continued of and by themſelves, (e) naturally deſire to be perpetuated in their Species, which, without that, muſt be ſoon extinguiſhed: Every living Creature has an Inclination to be aſſimilated to the firſt Cauſe, which is of a perpetual eternal Duration: The Senſation of Contact, by which Generation is effected, is a greater Gratification than the Senſe of Taſte, which only preſerves the Individual. Wherefore *Noah*, by Way of Puniſhment to his Son, who had diſcovered his Father's Nakedneſs, curſed *Canaan* his (f) Grandſon, and thereby aggravated his Son *Ham*'s Puniſhment more, than if He Himſelf had been accurſed: Wherefore that Law which puniſhes ſuch an Off-ſpring, affects the Sin with a ſeverer Penalty, than that which immediately affects the Offender in his own Perſon: Now, I muſt leave it to You to judge, how truly and zealouſly the Laws of *England* proſecute a Criminal Amour. It is not content only to condemn the Off-ſpring to be Illegitimate, but debars it from ſucceeding to the Patrimony of the Parents. Is not this a Chaſte Law, a Law of Order, does it not more effectually diſcourage this Sin, than the *Civil Law*, which remits the Sin of Fornication without exacting any Puniſhment at all?

(d) I *Cor.* VII.
(e) *Wollaſton*, Religion of Nature, p. 154.
(f) *Gen.* IX. 25.

CHAP. XL.

Why Baſe-born Children are not legitimated in England *by the ſubſequent Marriage.*

BEſides, the (a) *Civil Laws* ſay, that a Natural Son is the Son of the People, concerning which a certain Poet,

Cui Pater eſt Populus, Pater eſt ſibi nullus & omnis,
Cui Pater eſt Populus, non habet ipſe Patrem.

" He who has the People for his Father ſeems to have no Father " at all, or rather every One: He who has the People for his Fa-

(a) The Rule of the *Civil Law* is, that the Marriage proves the Son; thus *Celſus*; and *Ulpian* ſays, it is the Law of Nature, that He who is born out of lawful Marriage, unleſs there be a particular

" ther, has in Reality no proper Father." Since ſuch an Off-ſpring, when born, had no Father, how by any ſubſequent Act He can have One, is not known in Nature? A Woman has by two ſeveral Men two Sons; one of the ſaid Men intermarries with her; which of the two Sons is legitimated by ſuch Marriage? Opinion may prevail, but Reaſon cannot decide; there was a Time when both of them paſt in Eſtimation for Children of the People, or Community; when neither knew nor had any other Father: Wherefore, it would ſeem inconſiſtent and unreaſonable, that a Son born afterwards of the ſame Mother in lawful Wedlock, whoſe Original is confeſſedly known, ſhould be debarr'd of his Inheritance; and that either of the other Two Sons born out of Marriage ſhould take as Heir: Eſpecially in *England*, where the eldeſt Son, lawfully begotten, inherits to the Lands: Any indifferent Perſon would judge it no leſs unreaſonable, if a baſe-born Child ſhould have an equal Share in the Inheritance with One who is lawfully begotten. And by the *Civil Law*, the Inheritance is divided amongſt the Male Iſſue. St. *Auſtin* (b), in his Book (*de Civitate Dei*) has it, that *Abraham* gave all that " He had unto *Iſaac*, but unto the Sons " of the *Concubines* which *Abraham* had, *Abraham* gave Gifts." His Obſervation is, that thereby it ſeems to be intimated that the Inheritance of Right does not belong to a *ſpurious Iſſue*, but only a competent Living. Thus St. *Auſtin*; and under the Term (c) (*Spurious*) He includes all ſuch Children as are Illegitimate, or born

cular Law to the contrary, has no Relation to his Father, who begot, but muſt rely on his Mother, who bore him: To this agrees *Tholoſſanus*, who calls theſe natural Sons, *Spurii*, and *Alciat* allows only legitimate Sons to be of their Father's Family. Anſwerable hereunto is *Littleton*, § 188. v. *Dyer* 315. 345. *Hale* 220. 229. & *Wilk.* 285.

(b) Lib. XVI. on *Gen.* XXV. 5, 6. It appears by the Scriptures of the old Teſtament that Concubinage [*concubinatus*] and the Children which ſprung from thence, had not that mark of Infamy, nor even Sinfulneſs, which has been ſince fix'd upon them; the Notions of the Heathens in that Reſpect were not looſer than thoſe of the Jews, " Non erat vetitus eo tempore concubinatus," ſays *Grotius*, ſpeaking of *Abimelech* [1], Son of *Gideon*. " Neque concubina a matrona, niſi dignitate, " diſtabat." This was no Sin when a Plurality of Wives was allowed, as is plain by the Story of *Gideon*, who is ſaid to have had many Wives; the Reaſon of which Allowance, according to the ſame *Grotius*, was *Spes uberioris ſobolis*; ſuch a Wife *Grotius* [2] thinks *Keturah* was to *Abraham*, becauſe *Liberi ejus dona tantum accipiunt*. Homer [3], in the Speech of *Ulyſſes* to *Eumæus*, has it,

Of *Crete* I am, and rich my Father was
And many Children more he had. But they
Begotten were according to the Laws,
But of a *Concubine* the Son was I.
My Father was *Caſtor Hylacides*.

When he was dead and gone, my Brothers proud
Divide his State amongſt themſelves by Lot
And little of it they to me allowed.

Mr. *Hobbes'* Odyſſ. p. 172. v. Mr. Pope, B. 14. ver. 230. ib. pp. 309. 249. Potter's Gr. Antiqq. Vol. 2. p. 370.

Mr. *Joſ. Barnes*, at the Place, quotes *Solon*'s Law, [4] and adds, " Quin *Abrahamus* Patriarcha " natos ex *Concubinis* donis affectos in alias Regiones emiſit, *Iſaco* autem legitimo Filio, totam " hæreditatem reliquit. *Geneſ.* c. 25. ver. 5. 6. v. *Grot.* de jure, L. 2. c. 7. VIII. 3. v. 2 Chron. XXI. 3.

Νοθεία,] Pars bonorum paternorum, quæ nothis dabatur. Ea autem erat uſque ad mille drachmas. Sic *Lyſias* & *Iſæus*, & *Ariſtophanes* [5], & *Hyperides* & *Demoſthenes* in Oratione contra *Ariſtocratem*. *Suidas* ad v. Harpocration ad v.

" (c) *Spurius* eſt, qui ſine juſto patre natus eſt, hoc eſt, qui Patrem demonſtrare non poteſt: vel " qui poteſt quidem, ſed non eum, qui jure Quiritium probatus eſt. *Nothus*, vox eſt *Græca*, differt

4

[1] *Judges* VIII. 30, 31. & *Grot.* in Loc. [2] Ad *Gen.* c. 25. [3] Od. Ξ (L. XIV.) v. 199. & ſeqq. [4] *Potter*, Gr. Antiqq. II. 367. [5] Locus *Ariſtophanis* extat in Avibus, p. 616. 429. Ed. *Baſ.* P.)

born out of Wedlock; as the Holy Scriptures do likewiſe, which never give to any ſuch the Appellation of Baſtard. You ſee St. *Auſtin*, nay, and *Abraham* too, makes no ſmall Difference as to the Succeſſion of a ſpurious or legitimate Off-ſpring. Further, another Scripture ſets a Mark of Infamy upon all illegitimate Children in the following Metaphorical Expreſſions; "The multiplying Brood "of the Ungodly ſhall not thrive nor take deep rooting from Ba- "ſtard-ſlips, nor lay any faſt Foundation." The (d) Church alſo does the ſame, by not admitting them into Holy Orders; or, if it diſpenſes with them thus far; yet, they are never permitted to enjoy any Dignity or Pre-eminence in the Church. It is but fit and reaſonable therefore that Human Laws ſhould deprive ſuch Perſons of the Privilege of Succeſſion: The *Scriptures* alſo, in Point of Birth, judge ſuch inferior to thoſe who are begotten in lawful Marriage. (e) *Gideon*, that mighty Man of Valour, is ſaid to have threeſcore and ten Sons of his Body begotten; for He had many Wives, and but One Son by his Concubine, and yet this one Son ſlew all his Brethren, except *Jotham* (f), the Youngeſt, who hid himſelf. More Wickedneſs is found to have been in that one Baſtard-ſlip, than in threeſcore and nine lawfully begotten. It is an old Saying, g (24), If a Ba-

"ſert a *Spurio*, quod certum patrem nominare poteſt, ut qui è *concubinâ* naſcitur: *ſpurius* non poteſt, "eo quòd è muliere ſe pluribus proſtituente, ſive, ut *Lucret.* IV. 1064. loquitur, *volgivaga Ve-* "*nere eſt conceptus.* Pitiſc. ad v.v. *Spurius, Nothus.*

Baſtard,] "Illegitimus. *Baſtardia*, illegitima nativitas. *Abaſtardare, Baſtardum*, ſeu No- "thum aut illegitimum pronuntiare [6]. *Baſtardi*, ex ſtupro maris ac Virginis vel Viduæ Honeſtæ a- "liàs viventis nati [7]. *Baſtardi*, vulgò a Germ. Boefart, i. e. degeneris Ingenii, ut ideo Pater "non omnino certus eſt, q. tamen quodammodo certus eſt, qua de cauſa ei etiam omnino ab inte- "ſtato non ſucceditur, & ex Teſtamento ejus, Liberi non ſemper ſolidum accipiunt [8]." The Laws of this Kingdom, and, I think, of all other Civil States, at this Day, exclude *Baſtards*, without a ſubſequent Legitimation, from Inheritance [9]. In Our Laws, a *Baſtard* is defined, "One who is "born *ex illicito concubitu*," and the Rule in Law is, "Qui ex damnato coitu naſcuntur inter Li- "beros non computantur [10].

"Manſeribus [11] Scortum, Notho mœchus dedit ortum,
"Ut ſeges a Spicâ, ſic ſpurius eſt ab amicâ.
Se. *Abbatem.* v. *Calvin* ad v.

"Non ingredietur *Manſer*, i. e. de Scorto natus, in Eccleſiam Domini — a *Baſtard* ſhall not "enter into the Congregation of the Lord [12]." They were *Mamzers*, who were born of any Woman whom the Law prohibited them to have Knowledge of; whether it was by Violence, or by Conſent; by Error, or adviſedly, it made no Difference [13] *Spelm. Calvin* ad v.v. *Baſtardi. Manſer. Nothia. Spurium. Wilk.* 285. v. Lowth, Com. IV. P[t] 2. p. 194.

(d) By the **Common Law**, a *Baſtard* is prohibited from taking Orders, and is made incapable of any Eccleſiaſtical Benefice, (1) becauſe the Dignity of the Sacraments ought not to be committed to infamous Perſons, (2) Becauſe Children inherit the Vices of their Parents; therefore *Baſtards* are to have no Spiritual Promotion, in Deteſtation of their Parents Crimes. *Nelſon* ubi ſup. p. 81. v. *Seld.* III. 2009.

(e) *Judges* VIII. 30. (f) Ib. IX.

g(24) *Si bonus eſt Baſtardus,*] Yet ſee *Tiraquell. de Nobilitate, cap.* 15. & *Pontus Heuterus* his Collection touching Baſtards at the End of his *De veteri Belgio*, and You ſhall find, that moſt of the brave Spirits and able, of the former Times, are in the Catalogue of famous Baſtards. Remember *Euripides*, in his *Andromache.*

Νόθοι τε, ſays he, πόλλοι γνησίων ἀμείνονες.

Many Baſtards are better than Legitimates. Seld.

By the old Laws uſed by his (*William* the Conqueror's) Anceſtors and Country Men, that is, by thoſe of *Norway* [14], A Prince's Son gotten on a *Concubine*, *Bona* or *Frte*, was equally inheritable as

[6] V. *Bract.* L. 4. Tr. 3. c. 19.— L. 5. Tr. 5. c. 19. *Fleta*, L. 5. c. 5. § 7.— L. 6. c. 39. *Du Freſne. Spelm.* [7] *Vult.* Com. Inſt. de patr. ad princ. nu. 10. [8] *Calvin* ad v. Baſtardi. [9] *Seld.* III. 1335, 1768. [10] *Nelſon*'s Rights of the Clergy, p. 80. [11] V. *Spelm.* ad v. *Mancer.* [12] *Deut.* XXIII. 2. [13] v. *Patrick* ad Loc. [14] *Wilkins* 216. *Sheringham* 346. Mr. *Cooke* XXIII, VI.

a Baſtard be good, it is moſtly by Accident, or ſpecial Grace, if wicked, it is but his Nature. An unlawful Brood is thought to derive a Corruption and Stain from the Tranſgreſſion of the Parent, without any concurrent Fault of his own. So all of us have contracted a very great Corruption from the Sin of our firſt Parents, tho' not of ſo opprobrious a Nature: The Blemiſh with which *Baſtards* are affected, is widely different from that of Legitimate Children. The mutual culpable Luſt of the Parents affects their Off-ſpring, which does not give its ſelf ſuch a Looſe in the lawful chaſte Embraces of the Matrimonial Life. The Sin of Fornicators is mutual, and in Common; and as it bears a near Reſemblance therefore with the firſt Sin, it leaves a worſe Impreſſion on the Iſſue than that of any other Sin which Men commit in private without an Accomplice. So that a Child ſo born, may rather be called the Off-ſpring of Sin it ſelf, than of the guilty Perſons. Wherefore the

4 (h) Wiſ-

as any other born in Wedlock— " The ſame *William* D. of *Normandy* uſed the Term, *Baſtardus* " cum cognomento in Epiſtola (ut aliis pluribus) ad *Alanum Britanniæ* minoris Comitem, ſic or- " ditur, *Ego Willielmus cognomento Baſtardus*— The Baſtards of the old *Phillip* D. of *Burgundy* were wont to do the ſame; altho' of late Time it be reputed as a Name of Diſhonour [15]. " Ti- " tulum ſive nomen *Baſtardi*, a quibuſdam per ea tempora, ut Honoris notam uſurpatum conſtat, " Quod mihi maximo eſt argumento ut Vocis derivationem *Kilianam* amplectar, ſc. a beſt-aerd, " i. e. optima indoles, ſive, natura: illegitimo enim (inquit) & furtivo concubitu procreati animo " plerunq; ſunt alacri & elato, ingenio ſagaci & Judicio exacto: hanc, inquam, Vocis Origina- " tionem potius probarem, cum in cæteris nulla ſit gloriandi cauſa [16]." *Agamemnon*, in *Homer* [17], declares *Teucrus* to be a Man of brave Qualities: In the *Scholia* it is queried How, from amongſt all, taking Notice of *Teucer*, He is called, Νόθον; the Anſwer is, that it was not a Term of Reproach, for that the Ancients thought *Baſtards* upon an Equality with Legitimates; *Heſione*, his Mother, tho' a Captive, Yet ſhe was Noble, being Siſter to King *Priam:* Further, it is ſaid here for his Honour, for that in Point of Military Valour, He ſurpaſſed thoſe who were born in Marriage.

> Sprung from an Alien's Bed thy Sire to grace,
> The Vig'rous Off-ſpring of a ſtoln Embrace,
> Proud of his Boy, he own'd the gen'rous Flame,
> And the brave Son repays his Cares with Fame.
>
> Mr. *Pope*. B. 8. ver. 343—— v. *Hobb*'s Hom. Il. p. 114. *Chapman* 110.

Mr. *Pope* obſerves, that, as the female Captives were given for a Reward of Valour, and as a Matter of Glory, it could be no Reproach to be deſcended from them. If one might venture to criticiſe upon *Euſtathius*, and other great Critics, I ſhould be rather of Opinion, with a very * Ingenious Friend, that the Words of *Homer* intimate, that it was ſome Kind of Slur at leaſt, otherwiſe what does the Particle (περ) do there? Νόθον περ, &c. And there may be a good Reaſon aſſigned why *Agamemnon*, upon this Occaſion, ſhould put *Teucer* in Mind of the Diſadvantage of his Birth, (Viz.) to animate him to ſuch Illuſtrious Actions, as might cover over that Defect. All Marriages between Perſons of an Unequal Rank, between a *Free Man* and a *Bond Woman*, between a Citizen and a Strrnger, &c. were Species of *Concubinage*, and upon that Line of *Virgil.*

Suppoſita de Matre Nothos—— *Æn.* VII. 289. *Servius*' Note is, *Nothos Materno genere ignobiles* [18]. This was the Caſe of *Teucer*, and in that Senſe, becauſe He was born of a Captive, He calls Himſelf, Νόθον in *Sophocles* [19]; the Paſſage above in *Homer* is a Kind of Reproach of *Agamemnon*'s to *Teucer*; for when *Agamemnon* in *Sophocles* [20] Quarrels with *Teucer* about the Death of *Ajax*, He wonders that a Man born of a Captive ſhould carry Himſelf with ſo much Pride; and, if He that was nothing, behaved Himſelf ſo inſolently, what would He have done, if He had been born of One that was Noble. In which Paſſage *Sophocles* ſeems to have had in his Eye the Speech of *Agamemnon* to *Teucer* in *Homer* [21]. In Propriety of Language Νόθος is oppoſed to γνήσιος. *Dr. Potter* [22] is very particular and critical upon this Paſſage of *Homer*. *Du Freſne* [23] refers to, and quotes the Note of *Euſtathius* at the Place. " Poſt hunc *Servius Tullius* ſuſcepit imperium, genitus " ex nobili Fœmina, captiva tamen & ancilla. *Eutropius*. Hearne p. 6. See Mr. *Waterhouſe*, p. 481. *Spelm.* Reliq. 179. v. *Stat. Theb.* V. 222.

---

[15] *Seld.* III. 1335, 6. 1768. *Somner.* [16] Ib. v. *Spelm.* [17] ϑ. 284. * The Reverend M. C. P. [18] *Grot.* de jure, L. 2. c. 5. XV. 1. [19] *Ajax Lorarius*, ver. 1033. Ed. *Canter.* Antw. 12°. 1579. p. 63. *Soph.* Ajax à *Scaligero*, p. 63. [20] Ib. *Canterus*, p. 71. ver. 1250. *Scal.* p. 69. *Potter* Gr. Antiqq. II. p. 365. [21] *Il.* 8. ver. 284. [22] *Gr.* Antiqq. II. 364. & ib. 370. [23] Ad v. *Baſtardus.*

(h) Wiſdom of *Solomon*, diſtinguiſhing between a Spurious and a Legitimate Off-ſpring, of the latter ſays, " How Beautiful is the " Off-ſpring of the Chaſte and Nuptial Bed? The Memory of it is " Immortal, being acknowledged both by GOD and Man." Whereas the other is not ſo much as acknowledged amongſt Men; for which reaſon they are called the *Children of the People*, or *Community*: And of theſe the ſame *Book of Wiſdom* ſays, " Chil- " dren begotten of unlawful Beds, are Witneſſes of Wickedneſs a- " gainſt their Parents in their Trial." For being asked about their Parents, they reveal their Imperfections, as the wicked Son of *Noah* did his Father's Nakedneſs. It is therefore thought that the Man who was born blind, (i) concerning whom the Phariſees ſaid, " Thou waſt altogether born in Sins," that He was a *Baſtard*, and ſo, in that Senſe, born in Sin: And when they add immediately, " and doſt Thou teach us?" They ſeem to intimate as if a *Baſtard* were not qualified by Nature, like the Iſſue of a Lawful Bed, either for Knowledge, or for teaching others. Therefore that Law does not rightly determine, which equals *Baſtards* with Children Lawfully begotten in the Succeſſion to the Inheritance of their Parents, when the Church judges them not duly qualified for Orders, or fit to preſide in GOD's Inheritance. The Scriptures likewiſe put a wide Diſtinction between them, as We have above obſerved: And Nature its ſelf makes a Difference in her Gifts, by ſetting as it were a Natural Mark or Blemiſh on the Natural Children, tho' ſecretly impreſſed upon the Mind. Which now of thoſe Two Laws, in the Caſe before You, do you hold with and give the Preference to?

(h) Cap. IV. ver. 1 & 6.

(i) *John* IX. 34. Whence our A. had this Notion, at this Time of Day, is difficult to determine: As particular as it is, Dr. *Hammond* [24] ſeems to intimate no leſs. Thy being born Blind is a Mark and Character of ſome extraordinary Ill in Thee, which makes thee very unfit to teach *Doctors* and *Rabbies* in Matters of this Moment — of a moſt perverſe and depraved Nature; v. J. *Diodati* & *Whitby* ad Loc.

Νοθεία. Genus ſpurium. Soboles ſpuria. Adulterium. — Νόθος. Nothus. Peregrinus. Ortus legitimus in procreationibus hominum divinum quiddam eſt. Quare qui eo caret, νόθος dicitur, quaſi divino [beneficio] privatus. *Suidas*, (*Kuſter*) To. II. p. 628.

[24] Ad Loc.

CHAP. XLI.

The Prince's Approbation.

Prince.] INdeed I give the Preference to that Law which does moſt effectually caſt out Sin, and eſtabliſh Virtue. I am alſo of Opinion, that ſuch are leaſt entitled to the Benefit of Human Laws, whom the Law of GOD judges unworthy, and whom the Church excludes from her Orders and Dignities, as being by Nature more prone to Wickedneſs.

Chancellor.] I think You judge in the Caſe very rightly. I will now recollect ſome other Caſes, wherein the *Civil* and *Our* Laws diſagree.

CHAP. XLII.

Partus ſemper ſequitur Ventrem.

THE *Civil Laws* decree that the, a (25), Iſſue always follows the *Venter*, that is, the Condition of the Mother: For Example, if a (b) *Bond-Woman* be married to a *Freeman*, the Children ſhall be *Bond*. Again, if a *Bond-Man* marrieth a *Free-Woman* the Children ſhall be *Free*: By the (c) Laws of *England* "The Iſſue does not follow the Condition of the Mother, but al-"ways that of the Father:" So that a *Freeman* begetteth *Free*

4 *Children*

a [25] *Partus ſemper ſequitur Ventrem*] That is in reſpect of being free or bond. *In liberali cauſa, matris non patris inſpicitur conditio. C. tit. de lib. cauſa l.* 28. *avi & l.* 42. *placuit & de rei vendic. l.* 7. *Partum.* Where the DD. diſpute this point. But in Matter of Honour, or as it were hereditary Office, their Law is otherwiſe, as you may ſee in *C. tit. de Decurionibus l.* 22. *eos l.* 36. *Exemplo l.* 44. *nullus & tit. de Murilegulis l.* 15. *qui aut.* But the true Reaſon was upon this: that where Marriage, or *jura connubij* could not be, there always *partus ſequebatur ventrem*, in Regard no legal Father was of ſuch a Birth, and the *jura connubij* extended, before Chriſtianity receiv'd, only to Freemen. *Ulpian* in his *Tituli, tit. de his, qui in poteſtate ſunt*, hath theſe Words, which are more worth than all the barbarous Doctor's Comments. *Connubio interveniente, liberi ſemper patrem ſequuntur; non interveniente connubio, matris conditioni accedunt, excepto eo qui ex peregrino & cive Romana, peregrinus naſcitur: quoniam lex Menſia* (from whom that Law is ſo called I remember not) *ex alterutro peregrino natum deterioris parentis conditionem ſequi jubet. Ex cive Romano & Latina, Latinus naſcitur, & ex libero & ancilla, ſervus, quoniam quum his caſibus connubia non ſunt, partus ſequitur matrem.* For his Speech of a *Roman*'s marrying with an *Italian* Woman (not a *Roman*) believe it not without Examination of ſuch Story as you may find collected in *Carol. Sigon. de antiq. jure Civ. Rom. lib.* 1. *cap.* 9. and others dealing with that Subject. But clearly its true generally, that where *jura connubij* were not, there the *Roman* Law makes the Iſſue follow the Mother, as the Law of Nature requires, which the ſame *Ulpian* ſaith alſo in *π. tit. de ſtatu hominum l.* 24. *lex*; in which title *l.* 19. *Celſus* agrees with what We have tranſcrib'd from *Ulpian*. And the Marriages with bond Perſons were always accounted but *contubernia*, and not *connubia*, and they were ſtiled *contubernales*, not *conjuges*, as appears in *π. tit. de legatis* 3. *l.* 41. *uxorem* §. 2. *Codicillis, & C. tit. de inceſt. nuptijs l.* 3. *cum ancillis.* Seld.

This is agreed by all the Doctors, "Partus naturæ ratione matrem ſequitur; to this *Ulpian* "aſſents [1]. Lex naturæ hæc eſt ut Qui naſcitur ſine Legitimo Matrimonio matrem ſequatur, niſi "Lex ſpecialis aliud inducit." — de hac Lege nihil amplius accepi [2]; on which the Gloſs, "Quoad Libertatem & Servitutem quod & verum &c." Tho' the Father who begets may be uncertain, yet the Mother who bears him muſt be certain. Whoſe Child ſoever it is not, hers it is. *Turnebus*, writing of the *Spurij*, uſes theſe Words, "Horum Natales non habent obſcuram "matrem, ſed Patrem appellare non poſſunt." W. *Turneb.* Adverſ. Lib. 29. c. 13. p. 1112. v. *Wilk.* 270. N. t.

Lex Menſia de Liberorum Conditione, à quo, & quando ſit Lata, incognitum. Invenio illam apud *Ulpian.* Inſtit. V. *Auguſt.* de L.L. in *Menſia*, *Hotman*, Antiqq. *Rom.* I. p. 222. D. *Briſſon.* de jur. Connub. Theſ. Ant. Rom. *Græv.* Tom. VIII. p. 1053. C. *Roſin.* Ant. Rom. VIII. 2. (Edit. *Dempſter.* Lib. VIII. pars altera cap. 2. p. 1331.) *Barnabas Briſſonius* de Ritu Nuptiarum, & Jure Connubiorum. *Antonij Hotmanni*, J. C. de veteri Ritu Nuptiarum, obſervatio. — De Sponſalibus, de veteri ritu Nuptiarum, & jure matrimoniorum, item de Spurijs & Legitimatione. *Pitiſc.* v. *Patrick* upon Ezra, p. 563.

(b) Si mulier ſervilis Conditionis] "Quod inter Liberos & Cives *Romanos* Matrimonium, id in "Servorum Conjunctione & Copula, Contubernium Veteres appellarunt [3]." *Juſtinian* calls it *Servile Conſortium. Ulpian* [4] expounds *Contubernales*, Conjuges ſervi & ancillæ. *Connubium*, ducendæ uxoris jure facultas, nullum cum ſervis [5]. Inter *Servum & ancillam* jure *Romano contubernium* eſſe dicitur, non *Matrimonium.* Inter hominem liberum & ancillam *concubinatus* dicitur, non *Matrimonium* [6]. *Connubium* eſt, ut definit *Ulpian*, uxoris jure ducendæ facultas. Et, ut *Servius* [7], jus legitimi matrimonii. *Pitiſc. Covell*'s Inſt. p. 29. *Brit.* 78. a. b. *Mirr.* 110.

(c) Semper a Patre, non a Matre, Generationis ordo texitur. 1 *Inſt.* 123. a. v. ib. & *Bract.* L. 4. Fo. 271, 298.

---

[1] L. 27. ad *Sabinum.* [2] *Ant. Auguſtinus* de L.L. ap. *Græv.* To. 2. 1239.
[3] *Fornerius.* [4] Reg. Tit. 6. *Tholoſſ.* Synt. L. 9. c. 1. §. 3. v. *Calvin. Pitiſc.* [5] Ib.
[6] *Grot.* de jur. L. 2. c. 5. XV. 1. [7] *Æn.* 1.

Children, whether he be married to a *Bond* or *Free Woman*. So a *Bondman*, who is married, can beget none but *Bond Children*. Which Law think You is more equal in its Deciſion? Is not that a Cruel Law, which, without any Fault of the Party, adjudges the Iſſue of the *Freeman* to be *Bond*; Neither is that Law deem'd by ſome leſs Cruel, which adjudges the Iſſue of a *Free Woman* to be *Bond*: The *Civilians* ſay, that their Laws give the beſt Determination in the Caſe; for they ſay, "(d) A good Tree cannot "bring forth bad Fruit, neither can a corrupt Tree bring forth "good Fruit." And it has the Conſent of all Laws, that every Plant belongs to the Soil where it is planted: The Child alſo has a more certain Knowledge of the Mother who bore him, than of the Father who begot him. To this the *Sages* in *Our Laws* reply, that a Child lawfully begotten hath no more certain Knowledge of the one Parent than of the other; for both Laws, however wide in other Reſpects, agree in this, that He is the Father whom the Marriage declares ſo to be. Is it not more reaſonable that the Iſſue ſhould follow the Condition of the Father, than that of the Mother, ſince *Adam*, ſpeaking of ſuch as are joined in Wedlock, ſays, "(e) And they two ſhall be one Fleſh:" Which *Our Saviour*, in the *Goſpel*, thus explains, "They are no more twain but one "Fleſh." And foraſmuch as the Male comprehends the Female, the whole Fleſh, ſo made one, ought rather to regard and to be refer'd to the Male, as the more Worthy. "(f) Male and Fe-"male created He them, and called their Name *Adam*." The *Civil Laws* themſelves allow, that the (g) Woman always ſhines by Reflexion from her Husband, whence [C. Qui Profeſſione ſe excuſant L. nono L. fi.] the *Text* has it, "We, h(26), advance "Women by giving them the Titles and Honours of their Huſ-"bands:" We honour them with the *Sirnames* of our Families. We proceed and decree for and againſt them in the Courts of Law in the Name of the Husband. We (i) change their Habitations:

(d) *Matt.* VII. 18. — *Luc.* VI. 43.
(e) *Gen.* II. 24. — *Matt.* XIX. 6. — *Marc.* X. 8. — *Eph.* V. 31.
(f) *Gen.* V. 2. (g) 1 *Cor.* XI. 7.

h(26) *Mulieres honore Maritorum*] The Text is not voucht out of the true Place, it is in *C. tit. de incolis l. fin.* and alſo in *C. tit. de Dignit. l.* 13. *Selden.* v. Pac. Iſagog. in Inſt. Cod. &c. p. 683, 723.

(i) The Laws ſay "Uxores Domicilium & Forum Maritorum ſequuntur [8]." By the *Courteſy of England*, if Women take Husbands beneath their Degree they ſtill retain their beſt Title, which in ſome Meaſure compenſates the Subjection they are under [9]. A Woman Noble by Deſcent, marrying one who is under the Degree of the Nobility, remaineth Noble; But if ſhe was Noble by Marriage only, ſhe loſeth it if ſhe marry to one who is under the Degree of the Nobility; not if her Second Husband is Noble and inferior in Dignity to her Firſt Husband [10]. If a *Freeman* marry a *Bond-Woman*, ſhe is alſo Free during her Coverture; *Uxor fulget radijs Mariti*. By Marriage all Women are Noble who take to their Husbands any *Baron* or *Peer* of the Realm; But if afterwards they marry to Men not Noble, in the Senſe of the Law, they loſe their former Dignity, and follow the Condition of their latter Husband; *eodem modo diſſolvitur earum Nobilitas, quo conſtituitur*. Otherwiſe it is of ſuch Women who are Noble by Creation, Deſcent, or Birthright. Any Woman who is Noble by Birth, if ſhe be married to a *Baron* takes Place according to the Degree of her Husband, tho' ſhe be a Duke's Daughter: But if ſhe marry to one under thoſe of the Higher Nobility, as to a Knight or Gentleman, then, by *Courteſy*, Place is given according to her Birth, and not her Husband's. *Chamb.* Preſent State, Pt. 1. B. 3. c. 5.

[8] *Tholoſſ.* Lib. 18. c. 13. §. 25. [9] V. 4. *Co.* 118. b. — 6 *Co.* 53. b. [10] *Wood*, C. L. 42. v. 1 *Inſt.* 16. b. 2 *Inſt.* p. 50.

tions: But in Caſe they afterwards marry a Man of inferior Rank, they are deprived of their former Honours, and follow the Condition, as well as Habitation, of the latter Husband. And ſince all the Children, eſpecially the Sons, bear the Name of the Father, and not of the Mother, whence can it be, that the Son, in reſpect of his Mother, ſhould loſe his Rank and follow her Condition, when, at the ſame Time, He is known in Law by the Name of his Father who begot him: Nay, the Woman is diſtinguiſhed according to the Rank and Quality of her Husband, neither of which can ſuffer Diminution, or be ſullied by any Crime or Baſe Condition of the Wife. That Law ought to be accounted cruel and unjuſt, which, without any the leaſt Pretence of Reaſon, leaves the Son in a baſe Condition. Again, as to the Inheritance, which the Father (a Freeman, lying under no Imputation, Crime or Diſability in Law, whereby Forfeitures accrue) has, with great Care and Induſtry, acquired for Himſelf and Family, that in the Caſe before us the Inheritance ſhould paſs into the Poſſeſſion of a Stranger who took no Pains in the Acquiſition thereof, ſeems very unjuſt. Further, the Baſe Condition of the Child affects the Father's Name with the ſame Blemiſh. Again, that muſt needs be judged to be an hard and unjuſt Law, which tends to increaſe the Servitude, and to leſſen the Liberty of Mankind. For "(k) Hu-"man Nature is evermore an Advocate for Liberty." GOD Almighty has declared Himſelf the *GOD of Liberty:* This being the Gift of GOD to Man in his Creation, the (l) other is introduced into the World by Means of his own Sin and Folly; whence it is, that every Thing in Nature is ſo deſirous of Liberty, as being a Sort of Reſtitution to its Primitive State. So that to go about to leſſen this, is to touch Men in the tendereſt Point: It is upon ſuch Conſiderations as theſe, that the (m) *Laws of England*, in all Caſes, declare in Favour of Liberty. True it is, where the Father is a *Bondman*, tho' married to a *Free-Woman*, the Child is, by *Our Laws*, in the ſame State of *Bondage* with the Father; nor is this unreaſonable or unjuſt: For a Woman who has undervalued herſelf by marrying a *Bondman*, is thereby made *one Fleſh* with him. In Conſequence of the Laws above recited, ſhe follows the Condition of her Husband, and by her own Voluntary Act hath put herſelf under Subjection to him, having been before under no Conſtraint of the Law ſo to do. Thoſe, who by Act of Law enter themſelves *Bondmen* in the King's Courts, or ſell themſelves into *Bondage* without any Compulſion, are in the ſame Caſe. How then can the Laws make that Son *Free*, whom the Mother, in the preſent Inſtance, has ſo brought forth in her State of *Subjection:* For no Husband can

4 ever

(k) *Levit.* XXVI. 13.

(l) This Account of Sin and Slavery being introduced together into the World, ſeems to be taken from the Curſe of *Adam*, and of the Ground, and all other Creatures for his ſake, which were made Subject to Vanity (as St. *Paul* ſays) by Reaſon of *Adam*'s Sin. And that Glorious Reſtitution of the Univerſe, when there ſhall be a new Heaven and a new Earth, is what the Apoſtle calls the Earneſt Expectation of the Creature to be delivered from the Bondage of Corruption, and perhaps our Author might have this of St. *Paul* in his View. *Gen.* III. *Rom.* VIII. 19. & ſeqq. Mr. *Locke*, III. p. 306.

(m) "No Preſcription can be from illegal Acts, or againſt Liberty. — Populi omnes ad *Aqui-*"*lonem* poſiti Libertatem quandam ſpirant. *Bodin.* de Repub. L. 1. c. 8.

ever be ſo much in Subjection to his Wife, let her be of never ſo High a Rank or Quality, as this Woman hath made herſelf (n) *ſubject* to her Husband; whom, tho' a *Bondman*, ſhe hath advanced to be her *Lord*, according to the Sentence of GOD himſelf, pronounced in (o) *Holy Scripture*, " That every Wife " ſhall be in Subjection to her Husband, and He ſhall rule over " her." What the *Civilians* ſay concerning the Fruit of a Good or Corrupt Tree, is more to Our Purpoſe than to Theirs; ſince every Wife is either *Bond* or *Free*, according to the Condition of her Husband. And in whoſe Soil (pray) does the Husband plant, if not his own, when the Wife is made *one Fleſh* with him? What if he hath grafted a Slip of a good Kind upon a Crab-Stock, ſince the Tree is his Property, is not the Fruit ſtill his Fruit, tho' it ſavour of the Stock? So the Children begotten of a Woman are the Husband's, whether the Mother be *Bond* or *Free*. Nevertheleſs, by the Laws of *England*, the Lord of a *Bond-Woman*, *who* is married to a *Freeman*, without his Conſent firſt had and obtained, I ſay, in this Caſe, tho' the Lord can't get her divorced *à vinculo Matrimonii* (it being expreſly ſaid in the *Goſpel*, " (p) Whom GOD hath joined together " let not Man put aſſunder.") Yet He ſhall recover againſt the *Freeman* all his Damages which He hath ſuſtained by reaſon of the Loſs of his *Bond-Woman*, and of the Service which ſhe owed him. This, I conceive, is the Sum, Subſtance and Manner of Proceeding according to the Laws of *England*, in the Caſe now declared. And now, *My Prince*, what is Your Opinion of the Matter, and which of the Two Laws do you judge to be the moſt eligible? [V. *Cowell*'s Int. Tit. (*) Villenage. — *Cowell*, Inſt. de *Ingenuis*, Tit. 4. p. 33.

(n) *Rom.* VII. 2. " A Woman who hath an Husband is bound by the *Conjugal Law* to be Subject to her Husband as long as he lives; *the Law of her Husband*, i. e. The *Law* whereby He has the Right to his Wife. This Law dies with him. *Hammond, Locke, Whitby.*

(o) *Gen.* III. 16.

(p) *Matth.* XIX. 6.

(*) By the 12 C. 2. c. 24. all Tenures are turned into Free and Common Socage.

CHAP. XLIII.

The Prince yields his Aſſent.

Prince.] THere's no Pretence in Reaſon to doubt but that in this Caſe the Laws of *England* excel the *Roman-Imperial Laws*: And, for my own Part, I always think that Law moſt eligible, which ſhews more Favour than Severity to (a) the Parties concerned in it, and who are to be judged by it. For I remember an excellent *Rule*, which ſays, " That Matters " of Hardſhip are odious, and ought as much as poſſible to be

(a) Another Edition has it (*partubus*) and Mr. *Mulcaſter* tranſlates it (*Children*)— My Edition has it, *Partibus*. Either Word ſerves the Intention.

" reſtrained, but (b) Favours are to be amplified, and extended to " their full Extent."

Chancellor. With good Reaſon. I will propound one Caſe more, wherein the Two Laws differ, and then conclude; leaſt I prove tedious, whilſt I expatiate upon the Variety of more Caſes, and the Difference each Law obſerves in its Deciſion; and ſo my Diſcourſe would be drawn out into ſuch a Length, as inſtead of Entertaining, to diſguſt You.

(b) *Favores convenit ampliari* [1],] In Caſes which concern Our Liberties and Properties, Our Lives chiefly, this Rule is extended. *Stamford* [2] ſays, " That tho', by the ſtrict Rule of Law, " the Reading of two or three Words of the Verſe aſſigned, is not reading as a Clerk, and that " He ought to read the whole Verſe: Tho' at firſt He cannot read, but begins with Spelling, and " after puts the Letters together, and ſo reads, Yet, *in favorem Vitæ*, He ſhall have the Benefit of " his Clergy, as appears by the Book Caſe," *Ed.* IV. [3]. So, of the Allowance of the Benefit of Clergy upon the Arraignment it was very prejudicial to the Priſoner, for that He loſt his Challenges to the Inqueſt, which found him Guilty, and yet upon the Inqueſt of Office, formerly uſed, *ut ſciatur qualis Ordinario liberari debet*, He forfeited all his Goods and Chattels, and the Profits of his Land, until He had made his Purgation, therefore *Sir John Priſot*, C. J. of the Common Pleas, with the Advice of the reſt of the Judges, in the Reign of *H.* VI. for the Safety of the Innocent, and to relieve poor Priſoners who were deſtitute of Counſel, would not allow the Priſoner the Benefit of his *Clergy*, before He had pleaded to the Felony, and having had the Benefit of his Challenges and other Advantages, had been convicted thereof, which Courſe hath been generally obſerved ever ſince. * It was reſolved in the Caſe of the *Lord Audley*, that the demanding *Clergy* before the Party anſwered, where *Clergy* was allowable, amounted to a Confeſſion. *State Trials*, I. p. 265. * V. 2 *Inſt.* 164. M. 3 H. VII. pl. 10. v. *Cowell*, Inſt. 324. Burnet Ref. II. 323.

[1] *Pacius* Anal. p. 1036. [2] P. C. 133. b. [3] Trin. 9 *Ed.* IV. Fo. 28. pl. 41.

CHAP. XLIV.

Concerning the Tuition of Orphans.

THE *Civil Laws* commit the (a) *Guardianſhip* of *Orphans* to the, b(27), next in Blood, whether the Relation be by the Father's or Mother's Side, that is, to every one as He ſtands next in Degree and Order, to take by Inheritance, in Caſe the Orphan die. The Reaſon of this Law is, " No one is preſumed to

(a) This Act in Law of the *Guardianſhip* and *Tuition* of *Orphans* is according to the wiſe Proviſions of the Law of Nature and Nations. To help the Inability of *Orphans*, who have not probable Diſcretion to guide themſelves in any commendable Meaſure, but are apt to be deceived thro' a natural Levity and Inexperience, It was ever in all Times and Nations made good by the Appointment of ſome Perſon of Years, Integrity and Worth; who, during the *Orphan*'s Incapacity to order himſelf and his Affairs, ſhould diſpoſe them to his beſt Advantage for him. From this common Practice of Nations St. *Paul* [1] mentions this Law, " The Heir, as long as He is a Child, differeth " nothing from a Servant, tho' He be Lord of all" [Owner of the whole Eſtate] " but is under " Tutors and Governors [in his Minority governed by Guardians, and the Eſtate ordered for Receipts and Expences by Stewards till the Father by his Will, or the Laws of the Land put him in Poſſeſſion. *Hammond.*] W. *Wilk.* 21. N. w.

" Ut multas juris Species à Normannis, ſic etiam & dictiones mutuati ſumus. Illi autem " (Guardien) eum appellant, quem *Romani* Tutorem: vel potius *Tutorem* & *Curatorem* unica hac " appellatione comprehendunt: in quo Nos quoq; eos imitamur, eum quem illi (Gardian) *Cuſtodem* vel *Gardianum* dicentes. *Cowell*, Inſt. p. 54.

b(27) *Proximis de eorum ſanguine*,] The Civil Law firſt gave the Wardſhip (of Males till XIV. of Females till XII.) to the *Agnati*, or thoſe, *qui per maſculos conjunguntur*, and this was by the Laws of the XII Tables, as appeareth ff. *tit. de legitimis Tutoribus*, *l.* 1. *Inſtit. Tit. de legit. tutela.* But the Difference 'twixt *agnati* and *cognati* both in Inheritance, as alſo in Wardſhips, *Juſtinian* took away in *Authent.* 118. *cap.* 5. and this is that which is here ſpoken of, and ſo is that Law at this Day. Selden.

[1] *Gal.* IV. 1.

" take more Care of, or to have a greater Regard for the *Orphan*, than He who is next in Blood. The Laws of *England* determine quite contrary in the Caſe. If an (c) Inheritance which is held in *Soccage* deſcend to an *Orphan* from any Relation by the Father's Side, ſuch *Orphan* ſhall not be in **Guardianſhip** to any of his Father's Relations; but He ſhall be taken Care of by the, d (28), Relations of his Mother's Side. Again, if an Inheritance deſcend to him from any Relation by the Mother's Side: The *Orphan* and ſuch his Eſtate ſhall be under the Care and Direction of the Next a-kin by the Father's Side, and not otherwiſe, *until He come in Age*. The Law ſays, " To commit the Care of a Minor to him " who is the next Heir at Law, is the ſame, as delivering up a " Lamb to the Care of a Wolf, that is, to be made a Prey of. But if the Inheritance be held by (e) **Knights-Service**, and not in Soc-

(c) *Inheritance in Socage,*] There was not, as I conceive, any **Villenage** in *England* in Our A. Time, nor any Eſtates held in baſe Tenure, except *Copyholds of Inheritance* be accounted ſuch; but much of the mean Eſtates in *Socage*, that is, the Service of the Plough; therefore, He ſhews how the Children of ſuch, being Infants, or otherwiſe uncapable to manage themſelves and their Eſtates, are cared for by the Law, that is, the Lord of whom they hold ſuch their Eſtates, grants over the Cuſtody of the Heir of ſuch Soccager to his next of Kin, *who cannot inherit*. And it is a very Juſt *Rule*, " not to commit a Minor to the Hands of thoſe who may be Gainers by his Death." * All Lands being derived from the Crown, as the Great Tenures called in *Domeſday-Book*, **Tainlands** [2], were in the Hands of the Nobility and Gentry, who held them in *Eſcuage*, or other military Tenures, and attended the Kings in their Wars; ſo, the leſſer Ones, named in the ſame Book of *Domeſday*, **Reevelands**, were held in *Soccage:* The Heirs *Males* within XIV. *Females* within XII. In Caſe of no Diſpoſition (In this Caſe, I think, the Lord of the Fee, upon Petition, is to grant it to that Perſon ſo appointed; none in the Preſumption of Reaſon being more prudent to judge of the Fitneſs of a **Guardian** for his Child than the Father,) or Delivery of the Father in his Life-time, they were in the Cuſtody of the *Prochein amy a que Le Heretage ne poet deſcendre* [3]. The Law, intending the Preſervation and good Education of the Child, commits it to them who have a great Intereſt of Love to perform the Truſt, tho' none of the Eſtate, not any Temptation from Advantage to forfeit and betray it. W. V. *Wood*'s Inſt. C. L. 183. *Hickes*, d. e. 113, 14. and Note d. *Seld.* III. 656.

Soca. Socha. Socna. Quorum quodvis ſimpliciter & generatim acceptum, Libertatem, privilegium (*Franchiſiam* vocamus, à Gallico, *Franchiſe*) alicui à Rege indultum ſignificat. Ita *Soca* placitorum poteſtatem ſonat ſive juriſdictionem & jus tenendi Curiam (ut loquuntur *Forenſes* noſtri) in aliquo Dominio: quâ, ex privilegio Regis, gaudet cujuſlibet feudi vel Manerii Dominus in ſuâ (ut vocant) Baroniâ . . . . . *Soka* ſignificat libertatem Curiæ tenentium quam *Sokam* appellamus [4], cui convenit Codex quidam MS. eccleſ. *Cantuar. Soke.* Aver *fraunche court* de les homes . . . . territorium præcinctum, in quo *Saca*, & cætera privilegia exercentur, *Soca* præcipuè ſonat: *Saca* autem cum cæteris, ſc. **Tol, Team, Infangthefe**, &c. ipſa ſunt privilegia, ſive privilegiorum Species intra territorium ejuſmodi exercendorum. A *Soca* hac, Senſu quo privilegium, immunitatem, libertatem, ſignificat, venit terrarum illa apud Nos poſſeſſionis Species, *Sockagium*, aliàs *Socagium* dicta: Sumpto hinc nomine, quòd terra eo modo poſſeſſa, (ſub certis ſc. & Nominatis Servitiis in pacto inter *Dominum* & ejus *Vaſſallum* convento contentis) a quibuſcunq; aliis oneribus [5] immunis ſit & Libera; v. Tractatum de *Gavelkind*, cap. 4. *Somner.* v. *Spelm.* Reliq. 249.

d (28) *Ex parte matris,*] This Matter of Socage Wardſhip is grounded upon that ancient Ground, held to this Day regularly. *Nunquam cuſtodia alicujus de jure alicui remanet de quo habeatur ſuſpicio quod poſſit vel velit aliquod jus in ipſa hereditate clamare. Glanvil* hath it *lib.* 7. *c.* 11. & *Bracton, lib.* 2. *c.* 37. § 6. which is the ſame in Subſtance in *Littleton*, § 123. and *Breton, cap.* 66. Seld.

(e) *Per Servitium militare,*] That is, **Eſcuage**, and **Grand Serjeantie.** Knights-Service drew after it *Homage, Eſcuage, Wardſhip*, &c. but by the **Stat.** C. II. [6]. All the Military Tenures, as to *Wardſhip, Marriage* and *Relief* are made void, and turned into *Free* and *Common* Soccage. The Honorary Services of *Grand Serjeantie* are excepted [7]. Thoſe Kinds of Military Fiefs or Fees, as We now have, were not till the *Normans*, with whom the Cuſtom of *Wardſhips in Chivalry* [They began, not under *Hen.* III. as moſt ignorantly *Ranulph Higden*, the Monk of *Cheſter*, and *Polydore* tells You] came into England; but, before that, *Wards* were in *Scotland*, if their Stories and Laws of *Malcolm* II. [8]. deceive not. When He diſtributed the Kingdom into Tenancies, then " Omnes Barones, *ſay his Laws*, conceſſerunt ſibi *Wardam* & *Relevium*, de Hærede cujuſ- " cunq;

* *Wilk.* 266. N. m. [2] *Spelm.* Reliq. 38. [3] 1 *Inſt.* 87. b. § 123. [4] *Fleta*, L. 1. c. 47. [5] V. LL. *Ed.* Confeſſ. ap. Cl. *Selden* ad *Eadmer.* p. 184. c. 33. *Seld.* II. 1650. *Wilk.* 225.— ib. 202. & Gl. ad v.v. *Saca & Soca.* [6] 12 C. II. 24. [7] § VII. & ſeqq. [8] V. *Skene* ad v.v. *Relevium, Varda.*

Soccage, *then*, by the *Laws of the Land*, the Minor and his Eſtate ſhall not be under the Management of his Relations of either Side; but both ſhall be under the Care and Direction of the *Lord of the Fee*, until he arrive to his complete Age of One and twenty: Who can be ſuppoſed better qualify'd to inſtruct him in (f) Deeds of Arms, which, in Virtue of his Tenure, he's obliged to perform for the Lord of the Fee, than the Lord himſelf, to whom ſuch Service is due from his Minor; and who is ſuppoſed to have a ſuperiour Intereſt to advance his Ward in the World, in this and other Parts of Education, than any of his own Relations or Friends. The Lord, in order to have the better Service from his Tenant, will uſe his utmoſt Care, and may well be thought better qualified to inſtruct him in this Way, than his own Relations, who, probably, in this reſpect are preſumed, for the moſt part, wholly ignorant and unpractiſed; eſpecially, if his Eſtate be but a ſmall one: What is or can be of greater Uſe to a Minor, who, in Conſequence of his Tenure is obliged to venture his Life and Fortune, *if required*, in the Service of the Lord, than to be trained up in Military Diſcipline, whilſt he is yet a Minor. When he comes in full Age, he can't decline the Nature of his Tenure, but is obliged to do Suit and Service to his Lord of whom he holds. Indeed, it will be of no

" cunq; *Baronis* defuncti, ad Suſtentationem Domini Regis;" altho' *Buchanan* rather gueſſes that *Scotland* had this Cuſtom by Imitation of the *Engliſh* or *Normans*. But in this *Malcolm*'s Time Wardſhips were not at all in *England* [9].

Servitium militare,] " Servitus eſt feudalis, quæ munus aliquod ad militarem diſciplinam perti-
" nens, vel aliàs honorificum Domino præſtat: Et eſt duplex. Una, quæ ſoli debetur regi; altera,
" quæ cuicunq; feudi domino, licet & ipſe alteri Domino ſuperiori ſit feudatarius, vulgò, **Knight-**
" **Service.**" De quo v. *Cowell* tum in Inſtitut. tum in Interprete. *Somner. Cowell*, L. 1. T. 17. & p. 62. § 2. 1 *Inſt.* 75. b.

(f) *In actibus bellicis*,] For the Ground and Cauſe of Knight-Service Wardſhips, was in this, that the Lords, of whom the Infants held, might bring them up till full Age, and inſtruct them in militarie Performances, that ſo they might be better able to do their Services by which they held; which becauſe they could not do in their Infancy, the Profits of the Land was, as at this Day, taken by the Lords to ſupply the Defect of Service. Neither is this Cuſtome of Wardſhip ſo new, as *Randolf Higden*, in his *Polychronicon*, or rather ſome others, not underſtanding him, ignorantly make it, by ſuppoſing the Beginning of it here under *Hen.* III. Cleerly Wardſhips were before and from the *Normans*, at leaſt. See the *Grand Cuſtumier*, and *Glanvil*, *lib.* 7. *cap.* 9. Neither, if *Higden* himſelf had underſtood thoſe Words in his Chronicle, which he took out of a former, written by another Monk of *Cheſter*, which I have ſeen, had any Autority there been for *Henry* the Third's beginning them. His Words are theſe, *ſub anno* 1224. & 6 *Hen.* III. *Magnates Angliæ conceſſerunt Regi Henrico Wardas hæredum & terrarum ſuarum quod fuit initium multorum malorum in Angliâ.* An old Chronicle in that ineſtimable Library of Sir *Robert Cotton*, written by another of *Higden*'s Convent, under the ſame Year; *Magnates Angliæ reddiderunt Wardas ſuas Regi, quod fuit initium malorum.* This Monk knew what he ſaid, and uſed the Word *Wardas* chiefly for Forts, Caſtells, Honours, and the like; by which the Poſſeſſors preſerved their Safety in thoſe troubleſome Times. For at *Northampton* all ſuch were rendered to the King by the Nobility, upon the Exaction of *Hubert de Burgo*, Chief Juſtice, as both *Matthew Paris* and *Florilegus* expreſſe in theſe Words, *reddiderunt ſinguli caſtella, municipia, honores & cuſtodias Regi quæ ad coronam ſuam ſpectare videbantur.* Perhaps *cuſtodiæ* might here comprehend the Wardſhip too of ſome Heirs: But if ſo, yet they were ſuch as ſome Great Men poſſeſſed by reaſon of antient Tenures, and the King would them have, with the Caſtells and Fortreſſes by others held, that he might enjoy them with their Inheritances, as Part of Securitie againſt the Barons. No ſuch Intent is in any of the Elder Monks, as ſome would extract out of *Polychronicon*. Neither was that giving of Wardſhips to the King, other then as if the Nobilitie ſhould now give all their Wards to the King; ſuppoſing that the Storie were chiefly of giving Wardſhips of Body and Land in the common Senſe of *Wardæ*, as *Higden* miſreports it. But for the true underſtanding of that in Storie, take *Rot. Fin.* 6 *Hen.* III. *memb.* 4. where a Recital is, *proviſum eſt de conſilio Archiepiſcopi Cant. & Epiſcoporum Angliæ, & H. de Burgo Juſtitiarii noſtri, & Comitum & Baronum noſtrorum, quod à die Sancti Barnabæ Apoſtoli proximo præterito caperentur in manum noſtram omnia dominica noſtra, &c.* And

I

Seld. III. 1032, 3. v. *Spotiſwode*, p. 28.

no ſmall (g) Advantage to the Kingdom, that the Inhabitants be expert in Arms; for the *Philoſopher* ſays, "(h) Every one behaves "boldly in that Way in which he knows himſelf to excell." Is not this Law then, in your Judgment, *my Prince*, to be preferred to the other already deſcribed? [V. *Cowell*, Inſt. L. 1. Tit. 15. p. 56.

And hereupon Writs go into all Shires, to ſeiſe into the King's Hands all ſuch Lands, Caſtles, Forts, Manors, &c. But for the Antiquity of Wardſhips in *Britain*, both *England* and *Scotland*, ſee alſo *Hect. Boet. l.* 11. *Buchanan Rer. Scot. l.* 6. & 10. & *leges Malcolmi* 2. Seld. v. Whit. H. 23.

(g) In the *Confeſſor*'s Laws, it is, "Debent univerſi liberi homines, &c. ſecundum ſeodum "ſuum, & ſecundum tenementa ſua, arma habere, & illa ſemper prompta conſervare ad tuitio-"nem regni, & ſervitium Dominorum ſuorum, juxta præceptum Domini Regis explendum & "peragendum [10]." See the Laws of the Conqueror to the ſame Purpoſe [11]. The Cuſtom of the Nation has been to train up the Freeholders to Diſcipline; v. 13 & 14 C. II. c. 3. & ib. §. 20. and Title War, in the Table to the Statutes.

(h) The *Commentator*, in the Margin, quotes *Gaſſend.* Tom. 3. Lib. 1. Exercit. Paradoxorum.

[10] *Lambard*, p. 135. *Wilk.* 204. b. ſub finem. [11] Ib. 228. b. L. 58. *Hale* Hiſt. 107, 221.

CHAP. XLV.

The Education of the young Nobility during their Minority.

Prince.] IT is ſo; for in the firſt Inſtance (as you obſerve) it provides with greater Care and Caution for the Preſervation of an *Orphan*, than the *Civil Law* does: But I am much more pleaſed with the other Part of it; becauſe, by this means, our young Nobility and Gentry cannot ſo eaſily degenerate; but will rather, in all Likelihood, go beyond their Anceſtors in Probity and (a) Courage, and in every Thing that is (b) virtuous and Praiſe-worthy, being brought up in a (c) ſuperior and more honourable Family than that of their Parents: Nay, though their Fathers may have had the good Fortune to be educated in the like Manner before, yet the Father's Houſe, even with this Advantage, cannot be compared to that of the ſuperior Lord; to whom both, in their Turns, have been in **Ward.** Princes of the Realm, being under the ſame Regulation, like as other Lords, who hold immediately from the King, can't ſo ſoon run into Debaucheries, or a down-right Ignorance: Becauſe, during the Time of their Minority, they are brought up at the (d) Court. Upon which Account I can't but highly commend the Magni-

(a) *Strenuitate*] *i. e.* A reſolute Boldneſs and Undauntedneſs in virtuous Undertakings. W.

(b) *Morum honeſtate*] Honeſty in *Engliſh*, does not anſwer to *Honeſtas* in *Latin*. — Perhaps it may rather be render'd Generoſity of Manners. — *Honeſtum* ſignifies every Thing that is virtuous and decent and praiſe-worthy, and is oppoſed by the Moraliſts to *Turpe*, which ſignifies every Thing that is baſe and vitious.

(c) Formerly the State of the *Baronage* was great: They were attended upon by many Retainers and Servants well born, well manner'd and well clad. The Majeſty of *England* was ſeen in their Nobility, Equipage, Tables, Solemnities, Officers and Recreations. All Arts, Arms, Exerciſes, Pleaſures being there ſo ordered, that Perſons of both Sexes ſent there to be educated, came away accompliſhed. W. v. *Burnet* Ref. II. Append. 412.

(d) *Domo Regiâ*] The Court, in other Terms, τὸ βατίλειον, and Παλάτιον. It has proper Rewards and Encouragements for thoſe who frequent them. Our Laws make it exempt from ordinary Juriſdiction: Offences committed within the Verge of the Court, contrary to the Sacredneſs of the Place, are highly puniſhable. The Statute *Rich.* II. [1] "enacts,

[1] 13 *Rich.* II. 3.

Magnificence and State of the King's Palace, and I look on it as an (e) *Academy* for the young Nobility of the Kingdom to inure and imploy themſelves in robuſt and manly Exerciſes, Probity and a generous Humanity. — All which greatly tend to the Reputation and Proſperity of the Kingdom, both at Home and Abroad; and make a great Part of its Security againſt Invaders, and alſo formidable both to its Allies and Enemies. This Advantage could not accrue to the State, if the young Nobility and Gentry were to be brought up under the Care and Inſpection of their own Friends and Relations, who are but Perſons of the ſame Rank and Quality with themſelves. As to the Sons of the *Burghers*, and other *Freeholders* in **Soccage Tenure**, it can't be prejudicial to the Publick Good, if they be brought up among themſelves, with Perſons of their own Degree, and though they be not bound to perform any military Services; as, to any one who conſiders aright, may very plainly appear.

enacts, that "the Court of the *Steward* and *Marſhal* of the King's Houſe, nor alſo the Juriſ-"diction thereof, ſhall not paſs the Space of XII Miles, to be counted from the Lodging of our "ſaid Lord the King." By another *Statute* [2], "If a Man maliciouſly ſtrike in the King's "Court, by reaſon whereof Blood is, hath been, or ſhall be ſhed, his Right Hand ſhall be "ſtricken off, he ſhall have Judgment to have perpetual Impriſonment during his Life, and "ſhall pay Fine and Ranſom at the King's Pleaſure." See there the Ceremony at the Execution [3]. — The Reſidences of the King are accounted *Honours* by the Stat. *Hen.* VIII. [4]. It being againſt the Honour of the Sovereign to have his Laws violated in his Preſence; the Penalty of ſuch Inſolence is very ſevere. All Perſons who approach the King's Court are to be well habited, according to their Degree and Quality, and to demean themſelves with all Sobriety, Decency and good Manners. W. V. *Burnet*, Hiſt. Ref. I. 269. *Rapin*, VII. 583. *Spelm.* Reliq. 58. K. *Ed.* 6. Journal p. 62.

(e) *Gymnaſium*] Academy: *Seneca* [5] terms *Pyrrhus* the Inſtitutor of theſe *Gymnaſia* — "*Pyrrhus* "certaminis *Gymnici* præceptor] an Regem illum nobilem, an potiùs alium hujus artis; a quo & "Pyrrhica ſaltatio nomen habet." — The Exerciſes of Running, Vaulting, Juſting, Wreſtling, Tilting and Tournaments, were always judged proper for Courts and peculiar to them: They took Youth off from Effeminacy, and inured them to Manlineſs. The *Greeks* had their *Lycæum*, *Academia*, and *Cynoſarges* for the inſtituting of Youth, and *Gymnaſiarchæ* purpoſely deſigned to attend them [6]. The *Gymnaſia* are ſaid to be firſt in Uſe at *Lacedæmon*, but were afterwards very common all over *Greece*, and imitated, very much augmented and improved at *Rome*. They were not ſingle Edifices, but a Knot of Buildings united and capacious enough to hold many Thouſands of People at once, and Room enough for the *Philoſophers*, *Rhetoricians*, and the other Profeſſors to read their Lectures; Wreſtlers, Dancers and all others, who would, to exerciſe at the ſame Time, without the leaſt Diſturbance or Interruption. There were at *Athens*, and in other Parts of *Greece*, military *Academies*, or *Gymnaſia*, Schools where young Gentlemen reſorted to exerciſe Dancing, Fencing, Riding, &c. *Theophraſt.* de Blanditiâ (*Wheedling*) *Ariſtoph.* & Schol. in Equi. *Xenoph.* de rebus *Græc.* LL. 1, 2, 3, 6.

"Ante Solem exorientem niſi in palæſtram veneras
"*Gymnaſii* præfecto haud mediocris pœnas penderes.
"Ibi curſu, luctando, haſtâ, diſco, pugillatu, pila,
"Saliendo ſeſe exercebant magis, quam ſcorto, aut ſaviis:
"Ibi ſuam ætatem extendebant. *Plaut. Bacchides* III. 3. l. 20.

V. *Suidas* ad v. Γυμνάσια.

Rapin [7] has it, that *Alfred* the Great, educated at Court, or at *Oxford*, a great many young Noblemen, who were inſtructed in all Things neceſſary to render them one Day ſeviceable to their Country. But this was not the only Way he took to make the Arts and Sciences flouriſh: His own Example greatly contributed towards it; for never was a Prince more given to his Studies. Our Kings were, according to the firſt Inſtitution, the **Guardians** of the Ward: They bred them up in their Courts, and diſpoſed of them in Marriage as they thought fit. *Burnet*, p. 16. V. *Whitl.* H. 23.

---

[2] 33 *Hen.* VIII. 12 VII. [3] *Chamb.* B. 2. Chap. XIV. *Stamf.* 38 *a.* V. Caſe S. *Edmund Knevet* in *Baker* 307. B. *Vowell*'s Deſcr. *England* 197. [4] 37 *Hen.* VIII. 18.
[5] De *Irâ*, L. 2. XIV. Ed. *Lipſ.* Fo. *Venet.* 1615. p. 26. [6] V. *Potter*'s Antiq. I. 39, 42. *Pitiſc.* ad v. *Gymnaſiarcha* & ſeq. *A. Gell.* 390. *b.* [7] I. 350.

CHAP. XLVI.

Concerning open and private Theft.

Chancellor.] THERE are ſome other Caſes in which the *Civil Law* and the **Common Law** of *England* differ: For Inſtance: The *Civil Laws*, in Caſe of a (a) *manifeſt Theft*, where a Perſon is taken in the Fact, adjudge the Criminal to reſtore fourfold, and for a Theft which is not ſo manifeſt, where the Proof is not ſo plain, the Judgment is twice the Value of the Thing ſtoln: But the Laws of *England*, in either Caſe, puniſh the Party with Death, provided the Thing ſtoln, b(30), exceed the Value of XII *d.* So in the Caſe of Perſons who have been *Bondmen*, and are ſet *free*

(a) *Furtum manifeſtum*] *h. e.* Clarum & apertum. "Is in eâdem causâ fuit, quaſi eſſet in aliquo "*manifeſto* ſcelere deprehenſus [1]." God appointed Reſtitution in Caſe of Theft, "Five Oxen "were to be reſtored for one Ox ſtoln, and four Sheep for a Sheep [2];" And the Principal with a fifth Part of the Value in a Treſpaſs [3]. So King *David* determined againſt himſelf, that Reſtitution ſhould be fourfold, "Becauſe the Man did this Thing, and becauſe he had no [4] Pity." Lowth. Exek. p. 271. Anſwerable to this was *Zaccheus*' Proteſtation [5], "If I have taken any Thing from any Man by "falſe Accuſation (if by Occaſion of my Calling I have extorted from any Man more than was "my juſt Due) I reſtore him fourfold." *Grotius* [6] ſays, from the Law in *Exodus* [7] the *Greek* and *Roman* Laws took their Preſcripts; and that, if a Thief, before he had made away the Matter of his Theft, did, before Arraignment, repent of it, and reſtore it entire, and a *fifth* Part more with it, he was abſolved, according to the Text [8]. But, if the Thing ſtoln were alienated, then he was to reſtore *fourfold*; that is, to give him four times more Satisfaction than the Injury done to him comes to. *Hammond* has it, "I will, according to the Law for Thieves, make a fourfold Re- "ſtitution [9]." Wiſeman 238. *Furtum non manifeſtum* per dupli compenſationem expiari] *Non manifeſtum eſt*, quod *manifeſtum non eſt*—ſay the Lawyers, that is, where the Thing does not prove itſelf, but needs ſome other Proof. For this being capable of Evaſion and Excuſe, or ſomething in Mitigation, is allowed but a twofold Compenſation — thus among the Laws of King *Alfred* [10]. *Ariſtotle* [11] gives the Law, "If any one ſtole out of the *Baths*, or *Theatre*, or the *Forum*, he was to be put "to Death: But, if from a *private Houſe*, he was to reſtore only twice the Value." So *Plato* [12], ſo *A. Gellius* [13] confirm the Law to be. *Solon* ſuâ lege in fures, non ut *Draco* antea, mortis, ſed dupli pœnâ vindicandum exiſtimavit. — Si qui ſuper *manifeſto furto* jure & ordine (*i. e.* non criminaliter & extraordinarie) experiri velit: Actio in quadruplum datur. "*Manifeſtum furtum* eſt, ut ait "*Maſſurius Sabinus*, [a famous *Roman* Lawyer, quoted often by *Pliny* [14]], quod deprehenditur "dum fit; faciendi finis eſt quum perlatum eſt, quo ferri cœperat." Furti concepti, item oblati, tripli pœna eſt. Sed quod ſit oblatum, quod conceptum & pleraque alia ad eam rem, ex egregiis moribus accepta, neque inutilia cognitu, neque injucunda, Qui legere volet, inveniet *Sabinum* [15]. "Qui alienam rem attrectavit, quum id ſe invito domino facere judicare deberet, *furti* tenetur. "[16] Qui alienum jacens lucri faciundi causâ ſuſtulit; *furti* obſtringitur, ſive ſcit cujus ſit, ſive ne- "ſcit [17]." De diſtinctione Nocturni & Diurni Furis, & quænam potiſſimum ratio fuerit apud *Hebræos*, *Athenienſes*, *Romanos* videas *H. Grotium*, L. 2. de jure, &c. cap. 1. § 12. *A. Gell.* 606. Not. 6. Nox eſſet] *Pitiſc.* ad v. *Furtum*. *Cowell*, Inſt. 262, 3. *Puff.* L. 3. c. 1. §. XI.—L. 2. c. 5. §.§. XVII. XVIII. p. 286 *a.* L. 8. c. 3. §. XXVII. L.L. XII. Tabb. T. II. L. v. *Macrob.* L. 1. c. 4. — *Cic.* pro *Milone*, Delph. 305. V. *Spelm.* ad v. *Rectatus*. *Wood*'s Inſt. I. L. Tit. *Theft*, p. 230, 236. *Wilk.* 70. N. o.—242. N. b.—257. N. g.—259. N. t. *Hickes*, d. e. 38. — ad *Ottleyum* XLII.

b(30) *Duodecim denariorum valorem excedat*] So it is underſtood in the Stat. of *Weſtm.* 1. c. 15. that ſpeaks of Enditements of **Petit larceny que n'amount ouſter le value de** XII. **deniers.** And therewith agrees *Itin. Canc.* 8 *Ed.* 2. *tit.* **Cozone** 404, 406, & 415. But by *Breton* c. 15. Value of XII *d.* without more, makes it capital Felony. So are alſo Opinions in 18 *Aſſiſ. pl.* 14. 22. *Aſſiſ. pl.* 39. See *Stamford*, L. 1. c. 15. *Seld.*

This,

---

[1] *Cic.* in Verrem. [2] *Exod.* XXII. 1. [3] *Levit.* VI. 5. *Numb.* V. 7. [4] 2 *Sam.* XII. 6. [5] *Luc.* XIX. 8. [6] Ad loc. [7] Supra. [8] *Numb.* V. 7. [9] *Luc.* XIX. 8. V. *Hammond* ad *Luc.* III. Note d. *Whitby* ad *Luc.* XIX. *Tillotſon*, Fo. III, 86, 96.— 8° Vol. 8. R. B. pp. 372, 412. [10] *Spelm.* Conc. 358, 367, 372. [11] *Problem.* § 3. c. 14. *Puff.* 185. *b.* ib. XXVI. [12] L. 9. *de legibus.* [13] L. XI. 18. 606, 7. [14] V. *Fabric.* Bibl. *Lat.* I. 815.— II. 592. — III. 791. [15] Lib. cui Tit. eſt de Furtis. *A. Gell.* 607, 8. [16] Ib. & *Sabin.* juris Civilis L. 2. item alio capite. [17] *A. Gell.* 610.

free, if afterwards they misbehave, and prove (c) ungrateful, the *Civil Laws* adjudge them into Slavery again. But, by the Laws of *England*; He who is once made *Free*, is always ſo, let his Behaviour afterwards be what it will. Other Caſes there are not a Few, of this and the like Kind, which, for Brevity's ſake, I paſs over. In the Two Caſes now propounded, I forbear to expatiate, or inſiſt upon the Superior Excellence of the Laws of *England*: The Properties of each Law do not require ſuch a nice Examination: Beſides, I doubt not, Your own good natural Genius ſufficiently diſtinguiſhes between them.

This, I ſuppoſe, was the Law before the Conqueſt; that *Felonies* exceeding the Value of XII *d.* that is, what we call **Grand Larceny**, ſhould be puniſhed with Death. "L'Roy *Edward* limite "le quantitie de Robbery & de **Larceny** en ceſt manier, ceſt a ſcavoir, que nul nuſt Judgment de "la mort, ſi non **Larceny**, ou *Hamſochne*, ou ſon *Robbery* ne paſſuit XII *d.* Sterling [18]. That "is, King *Edward* limited the Quantity of Robbery and **Larcine** in this Manner; that is to ſay, "that none ſhould be adjudged to Death, if the **Larcine**, or the Stealing, or the Robbery did not "exceed twelve Pence Sterling." — Anſwerable hereto is *Fleta* [19]; who adds, that for Petty Felonies, Pillories, Loſs of the Ears, *&c.* were invented. Though many ſmall **Larcenies** may make a great and capital one, yet for one ſingle Theft, not exceeding the Value of XII *d.* no Death of Man can be. V. 1. *Inſt.* 391. *b.* 2 *Inſt.* 190. *Wilk.* 259. 3 *Inſt.* c. XLVII.

(c) *Libertinum ingratum*] Ingratitude, in the preſent Caſe, being not only Rebellion, but alſo an Abuſe of Love and Freedom, is therefore ſo vehemently proſecuted, becauſe it is unnatural and inconſiſtent with Reaſon and moral Juſtice, which cauſed the *Athenians* to enact that memorable Law, whereby the Party who did enfranchiſe any One, who proved Unworthy of that Favour, did *ſuperſede* his Enlargement, and call him back again into Servitude, as a Puniſhment for abuſed Goodneſs. "Illud Inſtitutum *Athenarum*, quam memorabile? quod convictus à Patrono *Libertus In-*"*gratus*, jure Libertatis exuitur. *Superſedeo* te, inquit, habere Civem tanti muneris impium æſti-"matorem. Nec adduci poſſum ut credam Urbi utilem, quem domi Sceleſtum cerno: abi igitur "& eſto Servus, quoniam *Liber* eſſe neſciſti [20]. Eſt Capitis Diminutio, ſtatûs mutatio, eaque aut "maxima, aut minor, aut minima, & cum aliquis ſimul & Civitatem & Libertatem amittit, quod "accidit Libertis ut ingratis erga Patronos condemnatis [21]." By the Laws of *England*, if the Lord does infranchiſe his **Villain**, He muſt be *Free*. "The Lord's Act ſhall be conſtrued moſt forcibly againſt himſelf, no new **Villenage** can be made *licèt gratus vel ingratus ſit Libertus*. W. *Cowell*, Inſt. p. 30. § 6.

[18] *Mirr.* Juſtic. c. 4. § 16. ſub finem. —— *Eng.* p. 204. [19] L. 1. c. 38. § 10. [20] *Val. Max.* L. 2. c. 6. v. Wiſeman, p. 142. [21] *Juſtin* 1. 16. 1 (*Elz.* p. 36.) *Wood* Inſt. J. L. p. 30. *Godwin* 30. 31. *Pitiſc.* ad v.

CHAP. XLVII.

An Enquiry why the Laws of England *are not taught in Our Univerſities, and why Degrees are not conferr'd on the Common Lawyers.*

Prince.] I Think indeed that it requires no great Labour or Study, to determine theſe Two Points. For, tho' in *England* Felons of all Sorts are every where puniſhed with Death; yet they ſtill go on in Defiance of all Laws to the Contrary: And, how much leſs would they abſtain, if only a gentler Puniſhment were threatened and inflicted? As for thoſe who have obtained their *Freedom*, it would be hard if they ſhould always live under the Laſh, as it were; and, in fear of being again reduced to a State of Slavery; eſpecially upon the Pretence or Colour of *Ingratitude*, ſince Pretences of this Kind could never be wanting; the ſeveral Inſtances and Species of Ingratitude being Innumerable.

I "(a) Hu-

" (a) Human Nature, in Caſe of Liberty, demands greater Fa-
" vours than is uſual in other Caſes." But, *My Good Chancellor*, not to enter into the Diſquiſition of any more Caſes of this Sort, I beg You to inform me why the Laws of *England*, which are ſo uſeful, ſo beneficial and deſirable, are not taught in Our b(31) *Univerſities*, as well as the *Civil* and *Canon* Laws, and why the Degrees of *Batchellor* and *Doctor* are not confer'd upon the *Common Lawyers*, as is uſually beſtowed on thoſe who are educated in other Parts of Learning.

(a) " In Favour of Liberty, the kindeſt Conſtructions are to be made upon all Occaſions *."

b(31) *In Univerſitatibus*] Indeed the Study of the Common Law hath not Place in Our Univerſities of *Oxford* or *Cambridge*, becauſe another Univerſity (the Inns of Court) is appointed for it. Yet the Statutes of the Univerſity of *Cambridge*, *Earum legum* (ſays Doctor *Cowell* in his † Epiſtle before his *Inſtitutions*, as he calls it, of the Laws of *England*) *quas habet patria noſtra, imperitos nos eſſe prohibent, ut differentias exteri patriique juris ſic cognoſcamus.*

* *Wood*, Inſt. J. L. p. 30. D. 50, 17, 122.
(† Præf.) *Seld.*

CHAP. XLVIII.

The Chancellor's Anſwer.

Chancellor.] IN the *Univerſities* of *England* the Sciences are taught only in the (a) *Latin* Tongue, whereas the (b) *Laws of England* are writ in, and made up of, three ſeveral Languages, *Engliſh*, *French* and *Latin*. *Engliſh*, as the Com-
mon

(a) *Latin* is the *Univerſity-Language* in which their Lectures are read, and Exerciſes held. It is more uſed in their private Exerciſes in the College, and their public Exerciſes in the Schools, than any other Tongue. W.

(b) Probably the Cuſtoms of *England*, called Our **Common Laws**, were at firſt recorded in *Saxon*, but when the Conqueror came in and prevailed, He declared his Conqueſt by a Change of Laws and Language. Tho' the Conqueror retained and confirmed the Major Part of the Common Law, they may well be ſaid to be in this Senſe changed as to the Introduction of the *French* Idiom put upon the Laws, not only in the Books, but from the Pleadings of the Advocates. The next Inſtance of not taking or admitting the Accounts of their Lands and Offices but in *French*, ſeems purely out of a Deſign to diſhonour Our Nation and Language. W. Dr. *Hickes* [1] places this change a little higher, and, perhaps, with a greater probability. " *Ed-*
" *wardo*, Qui apud *Nortmannos* enutritus, in *Nortmanniam*, ut *Ingulphus* [2] loquitur, pæne tran-
" ſijt, regnum adepto. . . . . Ille non tantum *Anglicos* ritus dimittere, & *Gallo-Normannicos* in-
" troducere contentus eſt; ſed *Nortmannos*, quorum ingentem numerum ſecum ex *Galliâ* adduxit,
" ad Magiſtratus, Honores & Munera Publica, tam regni, quam Sacerdotij evexit. . . . . Regno
" ad *Wilhelmum*, *Normanniæ* Ducem, tranſlato, *Angli* in *Normannicos* mores ruentes in tantum. . . .
" ut, tum eſſe *Anglicus* Eques, loqui *Anglicè*, *Anglorum* more *chartas* conficere, quin etiam quum
" eſſe *Anglus* dedecori eſſet; eſſe uni-nominis *Anglicano* ritu, non turpe ſolùm & opprobrij quid
" plenum, ſed grave & moleſtum fuiſſe nemini dubium eſſe poteſt. . . . . *Nortmanni*, Qui *An-*
" *glicam* à *Danis* Dominis *Dano-Saxonicam* factam ſibi ſubjecerunt, quamvis a *Neuſtriâ* huc pro-
" fecti, Origine *Dani* & *Norvegi* erant ante à Majoribus ſuis depravatam *Saxonicam* Linguam
" vocibus novis exoticis, tam *Danicis* quam *Gallicis* & *Franco-Gallicis*, data opera contaminabant;
" & quoad poſſent, & liceret, extinguere conabantur [3]. *Ingulpho* [4] teſte, modus ſcribendi *An-*
" *glicus* [i. e. *Saxonicus*] *Gulielmo* ſuo regnante omitteretur, & modus *Gallicus* [i. e. *Gallo-Nor-*
" *mannicus*] in *Chartis* & Libris omnibus admitteretur; imo Manus *Saxonica* tunc temporis, eodem
" auctore [5], *inuſitata* penitus & inviſa, ac maxime cum Gente ſua contemptui habita & nimium
" inacceptata erat; & manus *Gallicana*, quia magis legibilis & aſpectui prædelectabilis præcelle-
" bat frequentius indies apud omnes *Anglos* complacebat [6] . . . . Quoad Idiomata, phraſiumq;

" maximam

[1] d. e. 26, 7. *Rapin*, II. 67. [2] Edit. *Oxon.* p. 62. [3] *Hickes*, pr. g. a.
[4] Edit. *Oxon.* 71. [5] — Ib. 85. [6] *Hickes*, g. a. 139.

mon Law has moſtly prevailed, and been uſed among them; a great Part of it being derived down from the old Inhabitants, the *Angles*. c(32) *French*, becauſe the *Normans* upon the coming in

" maximam partem, etiam nunc *Saxonicus* eſt *Anglorum* Sermo, quamvis, *Wilhelmo Nortmanno* " Victore jubente, Leges *Gallicè* conditæ, Cauſæ *Gallicè* actæ, *Gallicuſq;* Sermo in Aula, Se- " natu, Foroq; integer auditus erat. Tantummodo nomina verbaq; nonnulla à *Nortmannis* il- " lata in *Saxonicum* irrepſerunt. *Hickes* ad *Ottleyum* VI. — ib. XVII. *Verſtegan*, p. 141. *Nichol- ſon*, III. 240. *Fort.* Pref. LII. & ſeqq. *Dugd.* 7. a. & Chap. XXXIV. 3 *Co.* in Proem. v. *Madox*, Pref. Epiſt. Hiſt. Excheq. XVI, XVII. *Sheringh.* 32, 108, 353.

c(32) *Gallica*] Touching this, *Ingulphus* * Abbot of *Crowland*, at the Conqueſt, thus: *Ipſum etiam idioma* (Normanni) *tantùm abhorrebant, quod leges terræ, Statutaque Anglicorum regum linguâ Gallicâ tractarentur: Et pueris etiam in Scholis principia literarum grammatica Gallicè, ac non Anglicè traderentur, modus etiam ſcribendi Anglicus omitteretur, & modus Gallicus in chartis & in libris omnibus admitteretur.* And *Robert Holkot*, a learned Dominican Frier in *lect.* XI. *ſuper Sapientiam. Narrant hiſtoriæ quod cum Willielmus Dux Normannorum regnum Angliæ conquiſiviſſet deliberavit quomodo linguam Saxonicam poſſet deſtruere, & Angliam & Normanniam in idiomate concordare, & ideo ordinavit quod nullus in Curia regis placitaret niſi in Gallico, & iterum quod puer quilibet ponendus ad literas addiſceret Gallicam & per Gallicam Latinam, quæ duo uſque hodie obſervantur.* He ſays the *French* continued till his Time. For he died in the great Plague 24 *Ed.* 3. But by Stat. of 36 *Ed.* 3. *cap.* 15. it was alter'd, which is the Statute this Autor ſpeaks of. *Seld.*

" *Richardus* ejuſq; Poſteri fuerunt *Angli*, in *Anglia* nati, Moribuſq; *Anglicanis* uſi: idq; gloriæ " Gentis *Anglicanæ* tribuendum eſt, quod cum *Normanni Anglos* odio haberent, eorum Leges " abrogare, moreſq; ad *Normannicos* trahere contenderent, *Anglorum* tamen Nomen conſervarunt [7], " ſummo ſibi Honori ducentes *Anglis* imperare, atq; adhuc apud eorum Poſteros manet *Anglorum* " Nomen & Regnum, iiſdemq; Regnum *Scotiæ* per *D. Jacobum* acceſſit. *Duck.* 285, 6.

As to any Change in the very Subſtance of Our Laws, tho' in Matters of Form of Pleading, or Judicial Proceedings, the *Normans* might have introduced great Alterations, it ſtands thus; The Civil or Municipal Laws concerning the Deſcent and Conveyance of Eſtates, they continued the ſame after the coming in of the *Normans* [8]. Tho' I grant that the Cuſtom of † *Sealing* Deeds is derived from the *Normans*, that is an Alteration only in Matter of Form. The ſame may be ſaid in the Crown Part of the Law: *Treaſon* and *Wilful Murder* were puniſhed with Death in the *Saxon* Times, as well as after; ſo were *Robberies* and **Burglaries** in the Night-time: Leſſer Offences were puniſhed by Fine, as well before the Conqueſt as after, in the ſame Manner leſſer Offences were puniſhed by Fine. As for the Law of **Engliſherie**, which was, that if a Man were found murthered, it ſhould be preſumed He was an *Alien*, or *Frenchman*, which was not taken away but by a Statute made on purpoſe temps *Ed.* III [9]. Tho' it may ſeem a Badge of the *Norman* Conqueſt, yet was it indeed a Law introduced by King *Canute*, in Behalf of his *Danes* [10]. As for Trial of all Offences, it was either by *Juries*, *Fire*, *Water*, *Duel*, or *Battle*, or elſe by *Witneſſes*, or *Compurgators* upon *Oath*, as well before as after *William* I. Entrance. Another Argument is, the *Saxons* and *Normans*, being both Northern People, had many of the ſame Laws and Cuſtoms, common to Both. As to the Pleadings and Judgments being in *French*, it is no Conſequence that all the Lawyers and Pleaders muſt be *Frenchmen*; The *Engliſh* Lawyers might have learn'd *French* enough to plead in three or four Years Time; which muſt neceſſarily be required before an entire Alteration of Our Laws cou'd be made, or Lawyers enough brought out of *Normandy*, and ſufficiently inſtructed in Our Laws and Cuſtoms, cou'd be fitted for their Employments. Suppoſing all Pleadings and other Proceedings to have been in *French*, it does not follow that this Practice cou'd have obtained in all the Courts of *England*; tho' in the King's Court at *Weſtminſter*, where the Judges were for the moſt part *Frenchmen*, or *Normans*, the [11] *Curia Regis*, where the King often ſat in Perſon, together with his *Chief Juſticiary*, or elſe in the Court of *Common Pleas*, which followed the *King's Court*, till it was ordained otherwiſe; or the *Court of Exchequer*, where, in thoſe Days, only Matters concerning the King's Debts, Lands and Revenues were chiefly heard and diſpatch'd: As for the *Court of Chancery* [12], it was not uſed as a Court of Equity till H. IV. V. VI. when it aroſe by Degrees [13]. Granting all the Proceedings in theſe Supreme Courts to have been in *French*, the King Himſelf, who ſat there with the *Chief Juſticiary* and the reſt of the Judges being either *Normans* or *Frenchmen*: Yet this can be of no great Importance in Compariſon of the Suits and Cauſes in the Inferior Courts; Such were *the Court of the Freeborough* or *Tithing*, wherein the *Tithing-man* or *Headborough* was the Judge. The *Court Baron*, which was incident to every Manor wherein the Suitors were the Judges [14]. The *Hundred Court*, where the *Hundredor*, together with the Suitors, were the Judges. The *Court of Trithing* [15], or *Lath*, which was not the ſmaller Court of the Tithing, nor yet the *Court Leet*, but a particular Court, conſiſting of three or four *Hundreds*.

Whitl. M. 344.

The

* Edit. *Oxon.* 71. *Savil* 901. v. W. 219. a. 212. *Rapin*, II. 295. *Dugd.* 96. a. *Sheringh.* 390. [7] *Polydor.* Virg. Lib. 13. [8] *Glanvil.* L. 7. c. 2. † V. ante p. 71, 72. [9] 14 *Ed.* III. 4. [10] V. *Bract.* Lib. III. de Corona cap. XV. 134. b. *Kelynge* 121. & ſeqq. [11] *Tyrrel*, I. Introd. LXXXV. — III. Append. 88. *Mad.* H. E. 5. 82. *Rapin*, II. 158. *Hickes*, d. e. 48. [12] Ib. [13] V. *Dugd.* [14] V. 4 *Inſt.* c. 55. &c. [15] *Hickes*, d. e. p. 4.

in of *William*, called the Conqueror, and getting Poſſeſſion of the Kingdom, would not permit Our Lawyers to plead but in that Language which they themſelves knew, and which the Advocates of *France* uſe in their Pleadings, and in their Parliaments. In like Manner the *Norman-French*, after their coming into *England*, would not paſs any Accounts of their Revenues, ſave in their own Native Language, leaſt they ſhould be impoſed upon: Even in their Exerciſes, and Diverſions, as *Hunting*, *Dice*, *Tennis*, &c. they obſerved the ſame Method: Whence it has happened, that the *Engliſh*, from ſuch their frequent Intercourſe with the *French*, have given in to the ſame Cuſtom; and to this very Day, in their Diverſions, and their Accounts, they ſpeak *French*: In the Courts of Juſtice they formerly uſed to plead in *French*, till in Purſuance of a (d) Law to that Purpoſe that Cuſtom was ſomewhat reſtrained, but not

The *County Court* [16], in which the Suitors alone were Judges: [17] *This Court* was anciently very conſiderable. There are divers Examples of Cauſes, between the Greateſt Perſons of *England*, and for Lands of great Value, begun and determined in this Court: In particular, the Great Trial at *Pinnendane Heath*, between *Odo* Biſhop of *Bayeaux* and *Lanfranc* A. Biſhop of *Canterbury*, concerning divers Manors of Lands in *Kent*, and other Counties. The A. Biſhop petitioned the King that Juſtice might be done him, *Secundum Legem terræ:* The King ſends forth a Writ to ſummon a *County Court:* The Debate laſted three Days before the *Freemen* of the County of *Kent*, in the Preſence of many Chief Men, Biſhops and Lords, and others, Skilful in the Laws; and Judgment paſt for the A. Biſhop by the Votes of the Freemen, *primorum proborum Hominum* [18]. The Caſe being thus, that no Suit cou'd be begun in thoſe Days but what was firſt commenced in the *Hundred Court*, no *Diſtringas* cou'd iſſue forth till *three Demands* were made in the *Hundred*, and from thence to be removed to the *County Court*, where regularly all Civil Cauſes were tried by the Suitors, as the only Judges: Then it will neceſſarily follow, that all Pleadings and Proceedings in any of thoſe Courts, being before meer *Engliſhmen*, muſt have been in *Engliſh*, and no other Language, ſo that not a twentieth Part of the Suits in *England* were brought to *London:* And as for Criminal Cauſes, unleſs *Treaſon*, they were all tried and judged in the Country, either within the particular Juriſdiction of Biſhops, Abbots, or Great Lords; or elſe of ſuch Cities and Towns who had the Privileges of **Infangthief** and **Outfangthief**, together with *Foſſa* and *Furca*; i. e. A Pit to drown, and a Gallows to hang Malefactors. If the Offence was done in the Body of the County, they were then tried and condemned in the *County Court*, Juſtices Itinerant [19] not being in uſe till *Hen.* II. Reign. . . . As to the Law Books and Reports being in *French*, this Cuſtom was not derived from *Normandy*. The firſt Reports We have, begin with the firſt Year of *Ed.* II. except ſome few Memorandums of Caſes adjudged in the Exchequer in the Reign of his Father, above two Hundred Years after W. I. coming in; nor could they be writ in the *Norman* Dialect; We had then nothing to do in that Dutchy. We muſt aſcribe the Original of this Cuſtom to ſome other Cauſe than the mere Will and Pleaſure of the Conqueror; for this We muſt go as high as *Edward* the *Confeſſor*; and in which *Ingulphus* [20] is very particular. The Stat. *Ed.* III [21]. did no ways extend to any Matters of Proceſs upon which Suits are founded. **Writs, Declarations**, and all other Matters of **Records** were always entred and enrolled in *Latin*. . . . . Our Statutes begun firſt to be drawn up and enrolled in *Engliſh* in the Time of *Henry* VII. Thus Mr. *Tyrrel* [22], to whom I beg leave to refer the Curious Reader for a larger Account of thoſe Matters, which He ſets in a very clear Light; where ſee the Argument diſcuſt, whether *Engliſhmen* loſt all their Eſtates by the *Norman* Conqueſt, and whether the *Engliſh-Saxon* Laws were confirmed or abrogated by *William* I. v. *Wilk.* 288. *Hale* 104. v. ib. 126. & ſeqq. 132, 3. *Tyrrel*, I. Introd. LXXX. & ſeqq. — II. Int. LXII. &c. C. CII. *Glanvil*, L. 1. c. 1. — 4. *Spelm.* Reliq. 58. *Cooke*, XXIX. XXXVII. CXLIV. *Seld.* III. p. 1333.

(d) *Cujuſdam Statuti*] That is, the Statute *Ed.* III [23]. which ordains and eſtabliſhes that "all "Pleas which ſhall be pleaded in any Courts whatſoever, before any of his Juſtices whatſoever, or "in the Courts and Places of any other Lords whatſoever within the Realm, ſhall be pleaded, "ſhewed, defended, anſwered, debated and judged in the *Engliſh* Tongue, and that they be "entred and inrolled in *Latin*." Tho' this **Stat.** took Effect as to the Language of Pleadings, yet not as to the *Law-Terms*. W. See Mr. *Whitlock*'s Speech upon the Debate touching the Act for putting the Law-Books and Proceedings into the *Engliſh* Tongue, truly tranſcribed by Mr. *Cooke* [24], and printed in Mr. *Whitlock*'s Memorials of the *Engliſh* Affairs, p. 460. *Temple* 235. v. *Rapin*, IV. 309.

Sadler 214.

---

[16] *Hale* 141. *Hickes*, d. e. 48. [17] V. LL. *Ed.* Conf. Wilk. 201. — 204. [18] *Eadmer.* p. 9. *Seld.* in Eadm. 197. — Opp. To. 3. 1664. *Hickes*, d. e. 31, 2. Mr. *Cooke* Arg. Antinorm. XCVIII. *Tyrrel*, II. Int. LXVII. *Lamb.* per Amb. K. 221. *Chron. Saxon.* p. 178. 36. *Madox*, Ex. 22. [19] *Hickes*, d. e. 48. *Mad.* Excheq. 12, 83. [20] Edit. *Oxon.* 62. [21] An. 14. c. 4. [22] *Bibl. Polit.* D. 10. [23] 36 *Ed.* III. 15. [24] CXLIV. & ſeqq.

not hitherto quite diſuſed; firſt, by reaſon of certain *Law Terms*, which the Pleaders expreſs more aptly in *French* than in *Engliſh*: In the next Place, becauſe *Declarations* upon **Original Writs** can't be formed ſo properly and agreeably to the Nature of thoſe Writs as in *French*, in which Language the Forms of ſuch *Declarations* are learnt and practiſed. Again, all Pleadings, Arguments and Reſolutions, which paſs in the King's Courts are digeſted into Books for the Information of the Young Students, and are (e) reported in the *French* Tongue. Many *Acts of Parliament* are pen'd in *French*, from whence it comes to paſs that the Modern *French* is not the ſame with that uſed by Our Lawyers in the *Courts of Law*, but is much altered and depraved by common Uſe: Which does not happen to the *Law-French* uſed in *England*, becauſe it is oftener writ than ſpoken: As to the (f) *Latin*, all **Original** and **Judicial Writs**, all **Records** in the *King's Courts* of Juſtice, and ſome (g) *Acts of Parliament* are pen'd in that Language. Wherefore the Laws of *England* being learn'd and practiſed in thoſe three ſeveral Languages, they can't be ſo well ſtudied in Our Univerſities, where the *Latin* is moſtly

1 in

(e) This relates to what was afterwards publiſhed in the **Year Books**, called the **Old Reports**. They begin with the Reign of *Ed.* III. and end with that of *Hen.* VIII. all of them, at ſeveral Times, have been publiſhed heretofore. There were Ten Volumes printed by Subſcription [25]; to which were afterwards added the Caſes adjudged in the Time of *Ed.* II. collected by Serjeant *Maynard*, out of ſeveral ancient MSS. They are the Collections of ſome Learned Men who (particularly choſen to, and probably they had Salaries for their Attendance in the *King's Courts*, in which they had a particular Station and Abode there during the ſitting of the Court) did obſerve, and take Notes of all that occur'd, which Notes they communicated to, and corrected by the Judge's Advices, and compar'd them with the Entries of the Courts, written in good old *Norman French*. (This is *Littleton*'s *French*.) W. *Plowden* ſaith, they were collected by four able Men, appointed for that Purpoſe, who yearly received Stipends from the King for their Reward, and conferr'd all together at the making and ſetting forth of their Reports. Pref. to 3 *Co. Dugd.* cap. XXIII. *Nicholſon*, III. 178. *Tyrrel*, II. Int. CI.

(f) *Sub Latina*] The Uſe of *Latin* was probably introduced by the Clergy, when the Biſhops and other Spiritual Perſons were Judges and Chief Officers in the Courts of Juſtice, as from after the Conqueſt to the Middle of *Ed.* III. they in a good Meaſure were [26]. They knowing whatever the Alteration of National Languages were, *Latin* would remain current, and be generally underſtood. Therefore they cauſed the Entries of the Courts of Law, and the Inſtruments to bring Cauſes and Perſons to appear and ſtand Judgment, to be in *Latin*; a Learned Perſon [27] aſſigns the Reaſon of the Ancient Law being in *Latin*, becauſe they were pen'd by Clergymen; who deſired to maintain the Pope's and their own uſurp'd Authority, by continuing both Kings and their People in Ignorance, which is one great Pillar of their Kingdom, and ſo have in their own and only Power the Conception and Interpretation of the Laws. Sir *Henry Spelman* [28] ſays, that Monks and Clergymen affected much the *Latin*, as well to make themſelves the more remarkable for their Learning, as to expreſs Works of Sanctity in a Sanctified Tongue. In another Place [29] he ſays, that ſome Monk or Prieſt, near the Time of the Conqueſt, deviſed certain Claſſick Forms of explaining the Thing granted, and the Appurtenances, by exquiſite Words and Phraſes, which were much in Requeſt till about. . . . . Times. By **Original Writs** I am apt to think the Text means, **Writs** to call Men to anſwer for the Violation of ſome Original Law, called **Original Writs**, becauſe they do, *Originem dare Sectæ*, as the *Original Law* violated does *Originem dare Brevi*. The Rule in *Fleta* [30] is, "Tot erunt Formulæ Brevium, quot "ſunt genera Actionum, Quia non poteſt Quis ſine *Brevi* agere [31]." Theſe Writs being grounded upon *Original Laws*, either the **Common** or **Statute Law**, cannot be altered, or departed from, but by the Common Conſent of the Nation in Parliament. So *Fleta* [32]. **Writs Judicial** are ſo called, becauſe they are to bring the Party who offends to Judgment of Law. They are framed by the *Curſitors*. The **Records**, or **Rolls** of the *Courts* of *Chancery*, *King's Bench*, *Common Pleas*, *Exchequer*, and the ſeveral Appendixes of them, are all in *Latin*. W. v. *Madox*, Pref. Epiſt. to Hiſt. Excheq. about the *Romanic* Dialect, and p. XVI. XVII. Mr. *Cooke*, XXIX.

(g) *Quædam Statuta*] For theſe, in both kinds, ſee the ſecond Inſtitute.

---

[25] Fo. Lond. 1679. [26] 1 *Inſt.* 304. b. [27] Sir *John Skene* in his Pref. to *Regiam Majeſtatem*; v. *Nichols. Scotch Hiſt. Lib.* 257. [28] *Reliq.* 234. [29] — Ib. 246. [30] L. 2. c. 13. §. 4. [31] V. *Bract.* L. 5. c. 17. 2. 413. b. [32] L. 2. c. 13. §. 2. 1 *Inſt.* 73. b. Pref. 3 *Co.* ſub Finem.

in Uſe: But, they are ſtudied in a (h) Public Manner and Place, much more commodious and proper for the Purpoſe, than in any Univerſity. It is ſituated near the King's Palace at *Weſtminſter*, where the Courts of Law are held, and in which the *Law-Proceedings* are pleaded and argued, and the Reſolutions of the Court, upon Caſes which ariſe, are given by the Judges, Men of Gravity and Years, well read and practiſed in the Laws, and Honoured with a Degree peculiar to them. Here, in *Term-Time*, the Students of the Law (i) attend in great Numbers, as it were to Public Schools, and are there inſtructed in all Sorts of *Law-Learning*, and in the Practice of the Courts: The Situation of the Place, where they reſide and ſtudy, is between *Weſtminſter* and the City of *London*, which, as to all Neceſſaries and Conveniencies of Life is the beſt ſupplied of any City or Town in the Kingdom: The Place of Study is not in the Heart of the City it ſelf, where the great Confluence and Multitude of the Inhabitants might diſturb them in their Studies; but in a private Place, ſeparate and diſtinct by it ſelf, in the Suburbs, near to the Courts of Juſtice aforeſaid, that the Students, at their Leiſure, may daily and duly attend, with the greateſt Eaſe and Convenience. [*Dugd.* Cap. XXXIV.

(h) The *Inns of Courts* and *Chancery*, which Society begun about the Time of *Ed.* III. [33], where Caſes (*placitantur*) are opened, debated and judged by the Parties, or their Counſel, that they may come on to Trial for a Remedy, as the Caſe appears; and receive their Determination or Judgment according to legal Juſtice, and the Circumſtances. W. v. *Dugd.* 21, b. 141.

(i) *Confluunt,*] So *Tully*, "Confluere ad aliqua Studia, when many Men with great Deſire give themſelves to any Study [34]. Cito in unum *confluunt*. In unum locum *confluere*. *Cic.*

[33] V. *Stow's* Survey of *London* 448. [34] *Cooper.*

CHAP. XLIX.

The Diſpoſition of the General Study of the Laws of England; *Of the Inns of Chancery, and the Inns of Court.*

BUT, *My Prince*, that the Method and Form of the Study of the Law may the better appear, I will proceed and deſcribe it to You in the beſt Manner I can. There belong to it *Ten* leſſer Inns, and ſometime more, which are called the (a) *Inns of Chancery*: In each of which there are an Hundred Students at the leaſt;

(a) *Hoſpitia,*] The *Inns of Chancery*, probably ſo called, becauſe formerly there dwelt in them ſuch Clerks as did chiefly Study the Formation of Writs. Thoſe which yet remain, are, I. *Thavie's Inn*, in *Holborn*; in this Inn of Chancery, were Students of the Law reſident in *E.* III.'s Time; as by a Record yet to be ſeen in the *Huſting Courts* of *London* [1], in Proceſs of Time, viz. Jan. (4 *Ed.* VI.) it was granted to the Benchers of *Lincoln's Inn*, and their Succeſſors, for the Uſe of the Students of the Law [2]. II. *Bernard's Inn, Holborn*, anciently called *Mackworth's Inn* [3], call'd ſo from one *Bernard*, who lived there 13 *Hen.* VI. it belongs to *Grays* Inn [4]. III. *Furnival's Inn, Holborn*, belonging to *Lincoln's Inn*; ſo called from *Sir William Furnival*, afterwards, *Lord Furnival*, in the Reign of *R.* II. as by a Record appeareth: In *Hen.* VI.'s Time it belonged to the Earls of *Shrewsbury*, after purchaſed by the Society of *Lincoln's Inn*. IV. *New Inn*, without the Liberties,

[1] Inter Com. Placita in *Huſtingo Lond.* die Lunæ in Feſto S. Clem. Papæ. 23 E. III. [2] W. 138. *Dugd.* 143. b. 271. [3] *Stow's* Survey *Lond.* Fo. 1633. 430. b. [4] *Miege* 163.

and, in ſome of them, a far greater Number, tho' not conſtantly reſiding. The Students are, for the moſt part, young Men; here they Study the Nature of **Original** and **Judicial Writs**, which are the very firſt Principles of the Law: After they have made ſome Progreſs here, and are more advanced in Years, they are admitted into the *Inns of Court*, properly ſo called: Of theſe there are Four in **Number**. In that which is the leaſt frequented, there are about Two hundred Students. In theſe greater Inns a Student cannot well be maintained under (b) *Eight and twenty Pounds* a Year: And, if He have a Servant to wait on him (as for the moſt part they have) the Expence is proportionably more: For this Reaſon, the Students are Sons to (c) Perſons of Quality; thoſe of an

4 In-

Liberties, belonging to the Middle Temple. *Dugdale* [5] ſays, it was a common Inn for Travellers, and from the Sign of Our Lady, was ſometime called *Lady Inn*. *Carter* [6] ſays, it was called ſo, for that the Picture of Our Lady was pourtraicted at the Door thereof. It became firſt an Hôtel for Students of the Law (as Tradition is [7]) upon the Removal of the Students of the Law from an old Inn of Chancery, called *St. George's Inn*, in the *Old Bailey*, over-againſt *St. Sepulchre*'s Church. Of this Houſe *Sir Thomas More* was a Student in *H.* VII.'s Time, before He came to *Lincoln*'s *Inn* [8]. V. *Clements Inn*, belonging to the *Inner Temple*, called ſo, becauſe it was ſometime a Meſſuage belonging to the Pariſh-Church of St. *Clements Danes*. VI. *Clifford*'s *Inn*, anciently belonging to the Honourable Family of the Barons *Clifford* (from whom the late Earls of *Cumberland* did deſcend) ſituate in *St. Dunſtan*'s in the Weſt; it belongs to the *Inner Temple* [9]. VII. *Staple Inn*, belonging to *Grays Inn*, ſometime belonging to the *Engliſh Merchants* of the *Staple* (as We have by Tradition) ſituate in the Pariſh of *St. Andrew's Holborn*. VIII. *Lyon*'s *Inn*, belonging to the *Inner Temple*; That this was an Inn of Chancery in *Hen.* V.'s Time, the old Books of the Steward's Accounts do ſhew: How long before, is uncertain [10]; before *Hen.* VII.'s Time it was the Sign of the Black Lyon, whence ſo called to this Day. IX. *Strand Inn* [11], formerly belonging to the *Middle Temple*: This, (as alſo the Biſhop *Worceſter's Inn*, The Biſhop *Coventre and Litchfield*'s Houſe, commonly called *Cheſter Inn*; The Biſhop *Landaffe*'s Houſe and a Church called *St. Mary* in the *Strand*) all which were ſwallowed up A. D. 1549, to build an Ample and Spacious Edifice to the Uſe of the Duke of *Somerſet*, called *Somerſet-Houſe* [12]. *Dugdale* calls it *Cheſter's Inn*, or *Strond's Inn*. The X. *Inn of Chancery*, ſtanding in Our Chancellor's Time, is wholly loſt, unleſs *St. George's Inn*, over againſt *St. Sepulchre*'s Church, which is thought to be the ancienteſt Inn of Chancery, be it [13]. The *Eight Inns* now remaining, are moſtly inhabited by Attornies, Solicitors and Clerks. They do all of them appertain to ſome or other of the *Inns of Court*, who ſend yearly ſome of their Barriſters to read to them: In each of theſe Inns of Chancery, one with another, may be about ſixty Perſons. The *Inns of Court* are, the *Two Temples, London*; formerly the Houſe of the Knights Templars, wherein they lived in great Plenty above One Hundred Years [14]. *Lincoln*'s *Inn*, the Houſe of *Henry Lacy* Earl of *Lincoln*, afterwards it was the Biſhop of *Chicheſter*'s [15] till *H.* VIII.'s Time, when the Intereſt thereof coming to Juſtice *Sulyard*, Sir *Edward Sulyard* (22 *Eliz.*) ſold it to the Benchers and Society of Students therein. This Inn chiefly grew up in *Hen.* VI.'s Time, when One of the Greateſt Glories of it, was Our Reverend Chancellor [16]. *Grays* Inn ſeated within the Manor of *Portpool*, as I conjecture, the Corps of ſome Prebendary in *St. Paul's* Church; called *Grays Inn* from the Family of the *Grayes*, inhabiting there in *E.* III.'s Time; near about which it began to be inhabited by the Students of the Law, who had it granted to them. Other *Inns of Law* in and about the City of *London*, Two, called *Serjeants Inn* in *Fleet-ſtreet* and *Chancery-lane* [17]. The *Six Clerks Office*, *Curſitors Inn*, *The Rolls*. *Dugdale*. *Carter*. *Chamberlayne*. *Camd.* B. 316. *Dugd.* 147. b.

(b) 80. *Scutorum*,] According to the Computation above [18] reckoning a *Scute*, the old Crown in 7 *s.* 2 *d.* Sterling, it comes to 28 *l.* 13 *s.* 4 *d.* computing it but in III s. IV d. the Sum Total is 13 l. 6 s. 8 d. that is, **Twenty Marks**. Biſhop *Fleetwood* [19], after having made ſome Computations with Reſpect to the Prices of Wheat, Oats, Beans, Ale, &c. concludes, that He can ſee no Cauſe why 28 *l.* or 30 *l.* per Ann. ſhould now be accounted a greater Eſtate than V *l.* was heretofore; that is, betwixt 1440, and 1460. temps *Hen.* VI. [19]. 20 *l. per Ann.* Two hundred Years ago, according to the ſame Author, was equivalent to 140 *l.* — *Sir Henry Spelman* (a very competent Judge and Eſtimator of theſe Matters) ſays, the Time was, when an Ounce of Silver, now valued at 5 *s.* was valued but at XX d. So, in the Act of Parliament 6 E. I. 8. 2 Inſt. 310, 311. v. *Spelm.* Eng. Works, Part 1. LXI. 157, 8. 2 *Inſt.* 577. *Cottoni* poſth. 290, 1. 298. *Camd.* Remains 163. v. poſt Cap. L. N. e. *Dugd.* 142. b.

(c) *Nobilium Filii*,] People of Quality, Gentlemen of the beſt Quality, Sons of the Lower Nobility, Knights, Eſquires and Gentlemen's Sons. In the Stat. *Ed.* IV. [20] it is, "Other Lords, "Knights,

---

[5] P. 230. [6] P. 253. [7] *Stow*'s Survey 427. [8] *Stow*'s Survey 490. [9] *Dugd.* 141. b. [10] Ib. 187. [11] *Spelm.* Reliq. 212. [12] *Dugd.* 150. a. 195. a. 230. *Stow.* 490. a. [13] W. 526. *Stow* 66. Pref. to 3 *Co.* [14] V. *Dugd.* Capp. LVII. LXI. [15] *Spelm.* Reliq. 213. [16] W. 527. *Dugd.* 268. [17] Ib. 32. b. [18] c. XXIX. N. p. [19] *Chron. Prec.* 169. [20] 22 E. IV. c. 6.

Inferior Rank not being able to bear the Expences of maintaining and educating their Children in this Way. As to the Merchants, they ſeldom care to leſſen their Stock in Trade by being at ſuch large yearly Expences. So that there is ſcarce to be found, thro'-out the Kingdom, an eminent Lawyer, who is not a Gentleman by Birth and Fortune; conſequently they have a greater Regard for their Character and Honour than thoſe who are bred in another Way. There is both in the *Inns of Court*, and the *Inns of Chancery*, a Sort of an *Academy*, or (d) *Gymnaſium*, fit for Perſons of their Station; where they learn Singing, and all Kinds of Muſic, Dancing and ſuch other Accompliſhments and Diverſions (which are called (e) *Revels*) as are ſuitable to their Quality, and ſuch as are uſually practiſed at Court. At other Times, (f) out of Term, the Greater Part apply themſelves to the Study of the Law: Upon Feſtival Days, and after the Offices of the Church are over, they employ themſelves in the Study of Sacred and Prophane Hiſtory: Here every Thing which is (g) Good and Virtuous is to be learnt: All Vice is diſcouraged and Baniſht. So that Knights, Barons and the Greateſt Nobility of the Kingdom, often Place their Children

" Knights, Eſquires, and *other Noblemen* of this Noble Realm of *England* [21]. *D'Argentre* in his Account of *Brittany*, ſays, " That by the Laws of *Brittany*, and according to the old Conſtitution " of that Dutchy, no Man could be an Advocate, or Pleader of Cauſes but one that was deſcended " from Noble Anceſtors." Mean Spirits embaſe the Honour of the Laws by ſerving the Ignoble Ends of thoſe, who would be Cruel and Oppreſſive in Defiance of the Laws [22]. W. The Students of the *Inns of Court* were anciently called *Apprenticii Nobiliores*; for, *Thomas Walſingham* [23], ſhewing that the Rebels did plunder the Lawyers of the Temple, ſaith, " Etiam locum, qui vocatur " *Temple-Bar*, in quo *Apprenticii* juris morabantur *Nobiliores*, diruerunt [24]." *Walſingham* [25], under the Reign of *Ed.* II. has it, " poſt Natale Dominicum convenit univerſa Multitudo Regni *No-* " *bilium* ad Parliamentum Londoniis." Now what is here meant by *Multitudo Nobilium*, may be proved by the Parliamentary Writs of this Year, as by the Cloſe Roll, wherein there are Writs of Summons directed to the Sheriffs [26]. And, that the Houſe of Commons were often ſtiled, *Noble*, in latter Times, appears by a Speech recorded in the Rolls of Parliament [27] to be ſpoken by *Sir Michael de la Pool*, then Lord Chancellor, to the Lords and Commons, which begins, Y diſt vous (i. e. I ſay to You) Meſſieurs Prelats & Seignieurs Temporelx & vous mes compaignons les Chivalers & autres de la *Noble* commune de Angleterre: To prove that this Word was then uſed in this Senſe amongſt *Civilians*, from whom We derive moſt of Our Titles of Dignities, You may ſee in *Barthol. Caſſanæus* [28]: Amongſt other Comments on the Word (*Nobilitas*) He hath " *Nobilitas* " etiam cauſatur ex Loco, quoniam Civis ex Urbe Splendida oriundus, *Nobilis* eſt." See there many Authorities [29]. Knights of Shires are frequently ſtiled *Magnates & Grantz* in ancient Records [30]: When the Queen and Prince came to London, " convenit illuc tota regni *Nobilitas*— " ubi cuncti cenſuerunt Regem indignum diademate, & propter plures Articulos deponendum [31]." Feb. 8. 42 *El.* It was ordered that none ſhould be admitted of the Society of the Inner Temple, except He were of good Parentage, and not of ill Behaviour. *Dugd.* 147. b. 274. a. 316. b. 317. b. (3) *Tyrrell*, Bibl. Polit. D. 6.— D. 7. p. 469.— Hiſt. I. Introd. XCI.– III. Append. 9.77. 98. Petyt 98. 118. & ſeqq. *Sir Rob. Atkins* of the Power, &c. of Parliaments 30. Whitl. M. 344. b.

(d) See Chap. XLV. N. e. (e) *Dugd.* 153. 285. 345, &c.

(f) *Feriæ.*] Pro Diebus Hebdomadis primò dici inſtituuntur a B. *Sylveſtro*, Qui floruit A. D. 316. primam Septimanæ Diem (quæ aliàs Dominica appellatur) *Feriam primam* dici inſtituit: deinceps reliquos, *Feriam ſecundam*, tertiam, quartam, &c. *Feriæ* dicuntur, non quòd a Neceſſariis Operibus & Mundanis Negotiis, ſed a Vitiis *feriarentur* (h. e. vacarent) Chriſtiani. *Feriæ*] Tempus illud quod Forenſibus Negotiis ac juri dicundo vacabant [32] *Feriæ*] dicebantur ἀργίαι, αἱ σχολαὶ in quibus otium & ceſſatio operum, aut judiciorum [33]. **The Vacation**, The Time reſpectively betwixt the End of every Term and Beginning of the Next. *Blount. Cowell.* 1 *Inſt.* 64. b. W. 151, 2. *Spelm.* Reliq. 72.

(g) *Diſciplina Virtutum.*] Matres Virtutum, novercæ Vitiorum. The *Inns of Courts* are what luxurious *Athens* was not. *Diogenes*, when He returned from *Lacedæmon* to *Athens*, ſaid, that He came

[21] *St. Amand* 89. *Mr. Cooke*, VIII. [22] *Dugd.* 142. b. [23] Annal. 4 R. II. *Camd.* Angl. &c. p. 249. l. 38. [24] *Dugd.* 143. b. [25] *Camd.* Angl. &c. p. 97. l. 44. [26] *Mr. Prynne's* 2d Part of the Rolls of Parliament Writs. [27] 7 R. II. Part 1. Nu. 1. [28] Catalog. Gloriæ Mund. Part 8. Conſid. 18. [29] v. *Mr. Petyt*, p. 94, 5. Scriptt. poſt *Bed.* 189. l. 5. & 15. *Tyrrell*, D. 6. & Append. [30] Ib. [31] *Camd.* Angl. &c. 126, 29. [32] W. *Spelm. Calvin. Du Freſne.* [33] *Pitiſc.* ad v.

Children in thoſe Inns of Court; not ſo much to make the Laws their Study, much leſs to live by the Profeſſion (having large Patrimonies of their own) but to form their Manners and to preſerve them from the Contagion of Vice. The Diſcipline is ſo excellent, that there is ſcarce ever known to be any Picques or Differences, any Bickerings or Diſturbances amongſt them. The only Way they have of puniſhing Delinquents, is (h) by expelling them the Society: Which Puniſhment they dread more than Criminals do Impriſonment and Irons: For He who is expelled out of one Society, is never taken in by any of the other. Whence it happens, that there is a conſtant Harmony amongſt them, the greateſt Friendſhip and a general Freedom of Converſation. I need not be particular in deſcribing the Manner and Method how the Laws are ſtudied in thoſe Places, ſince Your Highneſs is never like to be a Student there. But, I may ſay in the General, that it is pleaſant, excellently well adapted for Proficiency, and every way worthy of Your (*) Eſteem and Encouragement. One Thing more I will beg leave to obſerve, viz. That neither at (i) *Orleans*, where both the *Canon* and *Civil Laws* are profeſſed and ſtudied; and whither Students reſort from all Parts; neither at *Angiers*, *Caen*, nor any other Univerſity in *France* (*Paris* excepted) are there ſo many Students, who have paſt their Minority, as in Our *Inns of Court*, where the Natives only are admitted.

came from Men to Women: *Athens* was the Seat of Pleaſure, and abounded in all the Entertainments and Allurements which are ſo paſſionately courted by all Young Men, whoſe Inclinations naturally lead them on to the Purſuit of Pleaſure. *Lucian*'s Panegyric upon Demoſth.

(h) *Dugd.* 151.

(*) Wiſeman 188, 9.

(i) *Orleans*, as *France* is divided, lies in the *Lower Beauſſe*, *Orleanois*. It is a See Epiſcopal, a Bailiwick or Seige Preſidial, and an Univerſity, erected by King *Philip Le Bel.* An. 1312. tho', to ſpeak properly, it be an Hall only for the reading the *Civil Laws*, the only Learning there profeſſed, and for that conſiderable [34]. *Aurelia*, Academia inſignis, & ex primis *Gall.* Urbibus. De ea *Scalig.*

Non potuit magni caput eſſe *Aurelia* regni [35].

Academiæ *Galliæ* Illuſtres ſunt, *Lutetiæ Pariſiorum*, *Cadomi*, *Andegavis*, *Aureliani*, *Biturigibus* [36], *Pictavij* [37], *Burdegalæ*, *Toloſæ*, *Montis peſſulani* [38]. *Cluver.* Introd. Geogr. 12° *Lugd. Bat. Elz.* 1641. p. 81.

——— Undam
Ad *Ligeris*, quà dives agri, quà dives Iacchi
Oſtentat longe formoſa *Aurelia* turres. *Buchanan.*

Franciſcanus, ſub finem.

Aut culto *Aureliæ* Urbis in *Lycæo.*

[34] *Heylin* 201. *Veryard*'s Travels 73. New Atl. 139. a. *Eraſm.* Var. 182. a. [35] *Baudrand*'s *Ferrarius.* [36] New Atl. ubi ſup. *Bourges.* [37] *Poictiers.* New Atl. 140. [38] *Montpellier.*

CHAP. L.

Of the State, Degree and Creation of a Serjeant at Law.

BUT, *My Prince*, ſince You are ſo deſirous to know, wherefore, in the Laws of *England*, the Degrees of Batchelor and Doctor are not confer'd, as in the Profeſſions of the *Canon* and *Civil Law* in Our Univerſities; I would give You to underſtand, that tho' in *Our Inns of Court* there be no Degrees which bear thoſe Titles; yet there is in them confer'd a Degree, or rather an *Honorary Eſtate*, no leſs Celebrated and Solemn than that of Doctor, which is call'd the Degree of a (*) (a) *Serjeant at Law*, it is confer'd in the following Manner.

The *Lord Chief Juſtice* of the *Common Pleas*, by and with the Advice and Conſent of all the Judges, is wont to pitch upon, as (b) often as He ſees fitting, Seven or Eight of the Diſcreeter Perſons, ſuch as have made the greateſt Proficiency in the general Study of the Laws, and whom they judge beſt qualified. The Manner is, to deliver in their Names in Writing to the Lord *High Chancellor* of *England*; who, in Virtue of the *King's Writ*, ſhall forthwith command every one of the Perſons ſo pitched upon, that He be before the King, at a Day certain, to take upon Him the

(*) *Whitl.* M. 347.

(a) Serjeant at Law imports one who attends the Service of the King and his People in the Study, Profeſſion and Practice of the Law: A *State* and *Degree* in the Law, out of which, as the Seminary of Juſtice, the Judges are called; for none but a Serjeant at Law can be a Judge of either Bench, or Chief Baron of the Exchequer. The Honour of *Serjeancie* is a *Title*, *State* and *Dignity* of great Reſpect, as appears from the King's Writ, or Patent of his Creation. The Lord *Coventry*, in his Speech at the Creation of Serjeants, [1] ſays, "It is a very ancient *State* "and *Degree*, ſo ancient, that Books are as ſilent in it as in the Commencement of the Common "Law its ſelf." In the Stat. [2] of *Ed.* VI. and Q. *Mary*, *Serjeant at Law* is coupled with the Great Men of the Realm: *Countors* are *Serjeants*, Skilful in the Laws of the Land, who ſerve the Common People to declare and defend Actions in Judgment for thoſe who have Need of them, for their Fees. See the Duties and Qualifications of a *Serjeant* in the *Mirrour* [3], and *Fleta* [4]. The Lord Chief Juſtice of the Common Pleas, in the Name of the reſt of the Judges, nominates and preſents ſuch as He accounts meet to be *Serjeants*. An. 5 *Hen.* V. *Martine*, *Babbington*, *Pole*, *Weſtbury*, *June* and *Rolfe* (*Fane* and *Ralfe* [5]) Famous *Apprentices at Law*, having Writs delivered unto them to take the State and Degree of *Serjeants*, returnable in *Michaelmas Term*, at the Return in *Chancery*, they abſolutely refuſed the ſame: whereupon they were called into Parliament, and there charged to take the *State* and *Degree* upon them, which, in the End, they did [6]. In a general Senſe, all *Serjeants at Law* be the *King's Serjeants*, becauſe they are all called by the *King's Writ*. 2 *Inſt.* 422. Pref. to 10 *Co. Seld.* ad Decem Script. (opp. II. 1172.) *Dugd.* c. XLI. & ſeq. ib. 110. b. 111. a. *Somner*.

(b) This is to be underſtood when the Number is ſmall, by Death, or any other Incapacity; when there are not ſufficient to ſerve the King, and the Subject, in the great Affairs of the Law. "*Serjeants*, of old, were Men of great Learning in the Laws, who intended their Client's Cauſe "according to Law, and with Integrity. Formerly Counts and Pleadings were received at the "Bar, every little Doubt was prepared and cleared by a Debate there openly had, before either "*Demurrer* or *Iſſue* joined. Such was their Caſe, not to prejudice their Client's Cauſe by any "ſudden indigeſted Conceptions, any Omiſſions or Neglect, and then the *Prothonotary* entred it "on Record [7]." *Maturioribus*] Diſcreeter Perſons, thoſe who, from the Reſult of many Years Study and Practice, approve themſelves judicious and well adviſed Advocates in all the Points of Law-Learning and right Judgment, the approved and moſt Worthy in every Inn of Court. V. *Croke Charles* 2. — 4. 67, 71. *Dugd.* c. XLVI.

---

[1] 12 *Car.* I. [2] 1 E. VI. 7. 1 *Mar.* Seſſ. 2. c. 8. [3] C. 2. §. 5.
[4] L. 2. c. 37. *Weſtm.* 1. c. 20. [5] *Cott.* Abr. 553. 10. [6] 2 *Inſt.* 214.
[7] Lord Keeper *Coventrey*'s Speech.

State and *Degree* of a **Serjeant at Law**, under a great Penalty, in every one of the ſaid *Writs* ſpecified and limited.

At which Day, the Parties ſummoned and appearing, each of them ſhall be ſworn upon the Holy Goſpels, that He will be ready, at a further Day and Place to be appointed, to take upon Him the *State* and *Degree* of a **Serjeant at Law**, and that He ſhall, at the ſame time, give (c) *Gold*, as, according to the Cuſtom of the Realm, has in ſuch Caſes been uſed and accuſtomed to be done. How each is to behave and demean himſelf, the Particulars of the Ceremony, and Manner how theſe Eſtates and Degrees are to be confer'd and received, I forbear to inſert; it will take up a larger Deſcription than conſiſts with ſuch a Succinct Diſcourſe: Beſides, at other Times, I have talked it over to You in our common Converſation. But I deſire that You ſhould know, that, at the Time and Place appointed, thoſe who are ſo choſen, hold a ſumptuous (d) Feaſt, like that at a *Coronation*, which is to continue for Seven Days together: Neither ſhall any one of the New-created *Serjeants* be at a leſs Expence, ſuitable to the Solemnity of his Creation, than (e) *Two Hundred and Sixty Pounds*, and upwards, whereby the Expences in the whole, which the Eight will be at, will exceed *Three Thouſand Two Hundred* (f) Marks. — To make up which, one Article is, every one ſhall make Preſents of (g) Gold Rings to the Value, in the whole, of Forty Pounds (at the leaſt) *Engliſh* Money. I very well remember, when I took upon me the *State* and *Degree* of a **Serjeant at Law**, that my Bill for Gold Rings came to Fifty Pounds. Each *Serjeant*, at the Time of his Creation, gives to every Prince of the Blood, to every Duke, and to each Archbiſhop, who ſhall be preſent at the Solemnity, to the Lord *High Chancellor*, and to the Treaſurer of *England*; to each a Ring of the Value of XXVI *s.* VIII *d.* to every Earl and Biſhop, to the Keeper of the Privy Seal, to each Chief Juſtice, to the Chief Baron of the King's Exchequer, a Ring worth XX *s.* and to every other Lord of Parliament, to every Abbot and to every (h) *Prelate of Diſtinction*, to every Worſhip-

4 ful

(c) In Imitation of Kings at their Coronations, who give Gold and Silver Medals. "Men of "Worth have been ſo far indulged in ſuch Imitations of Greatneſs, as are compatible with being "Subjects. From this Uſe of Kings, probably grew the Example of our Anceſtors, for *Serjeants* upon Creation-Days to beſtow Pieces of Gold, artfully formed and inſcribed in Token of their Admiſſion to Honour by the King's Favour. W.

(d) *Dugd.* c. XLVII. &c.

(e) *Sexcentorum Scutorum*] The Account of the whole, and every particular Perſon's Expence, at his Call to be a *Serjeant*, as here ſet down, if be meant half Roſe Nobles at III *s.* IV. *d.* a Piece, comes to 266 *l.* 13 *s.* 4 *d.* to Each his Proportion, which being multiplied by 8. makes up the 3200 Marks here in the Text; which Sum reduced to Pounds Sterling makes 2133 *l.* 6 *s.* 8 *d.* A great Sum of Money in thoſe Days, when, tho' Things were riſen higher than in *Hen.* II. [8] Time, yet they were then ſo cheap, that this Sum amounts to near 7000 *l.* now a Days, and declares the *State* and *Degree* neither cheaply come by, nor maintained; and therefore only to become thoſe who have ſufficient Learning in the Laws, and an Eſtate to ſupport the Dignity and Equipage of it. No inſufficient Men are to be called, *nè Dignitas hujus Status vileſceret.* An *Apprentice at Law*, who is called by **Writ** *ad Statum & gradum Servientis ad Legem*, can be fined but once: *Infinitum in jure reprobatur.* V. ante c. XXIX. N. p. &c. XLIX. N. b.

(f) *Fort.* of Monarchy 132, 3. N. h.

(g) Old faſhioned joint Rings, with Inſcriptions. Forty Pounds Sterl. which is near as much as 200 *l.* now. W. *Dugd.* 124. b. 130.

(h) *Notabili Prælato*] This may, perhaps, import ſome remarkable Perſon not included under any of the Perſons before deſcribed, perhaps ſome Deans (*Decani cum juriſdictione*) who had Government,

[8] *Spelm.* Gl. ad v. *Firma.*

ful Knight, then and there preſent, to the Maſter of the Rolls, and to every Juſtice, a Ring to the Value of one **Mark**; to each (i) Baron of the Exchequer, to the Chamberlains, and to all the Great Men at Court then in waiting on the King, Rings of a leſs Value, in Proportion to their Rank and Quality: So that there will not be the meaneſt Clerk, eſpecially in the *Court of Common Pleas*, but that he will receive a Ring convenient for his Degree. Beſides, they uſually make Preſents of Rings to ſeveral of their Friends and Acquaintance. They give alſo *Liveries of Cloth*, of the ſame Piece and Colour, which are diſtributed in great Quantities, not only to their *Menial Servants*, but to ſeveral others, their Friends and Aquaintance, who attended and waited on the Solemnity of their Creation; wherefore, tho' in the Univerſities, they who are advanced to the Degree of Doctors are at no ſmall Expence at their Creation, in giving (k) *round Caps*, and other conſiderable Preſents: Yet they do not give any Gold, or Preſents of like Value; neither are at any Expences in Proportion with a **Serjeant at Law.** There is not, in any other Kingdom or State, any particular Degree confer'd on the Practiſers of the Law *as ſuch*; unleſs it be in the Kingdom of *England*. Neither does it happen, that in any other Country, an *Advocate* enriches

Government, ſuch as were thoſe five called by *Writ* to Parliament 49 *Hen.* III. Literis ſuis per Univerſum regnum undequaque tranſmiſſis Univerſos regni Magnates, tam *perſonas Eccleſiaſticas* quam Seculares convocavit, ut coram eo convenirent apud Sanctum Edmundum [9]. His auditis, convocato *Clero* regni ac populo convenerunt Londoniis apud Fontem clericorum, decimo Kalendas Aprilis [10]. Parliamentum Londini, Magnatum tantum & *Archiadiaconorum* [11]. Ad Parliamentum aliquando Milites Nobiles, *Priores*, & *Clerici* conveniebant [12]. Mr. *Tyrrel* [13] ſays, the Word (*Prælatus*) takes in none under the Degree of a *Dean*. Magno militi] may be either a Knight of great Office at Court, ſuch as the Honourable Offices of the Court were filled with in the Reign of *Hen.* VI. (at that time Lords and Knights were not ſo common) or elſe ſuch as were Men of great Fortunes, Families and Revenues. *Cooke* CIX. CXI. *Petyt* 95. Burnet, Ref. II. 49. I. 129. III. 81. Ant. Harmer, p. 35.

(i) Theſe are the King's Juſtices, or Judges, probably ſo called, for that the *Normans* [14], who introduced that Court into *England*, call their Judges and Magiſtrates **Barons**, as We in *England* called them Judges and Juſtices. " Unde *Barones* Scaccarij dici cœperint [15]. A very particular Account of them ſee in *Cowell.* It was petitioned in Parliament (10 R. II.) that the Statutes whereby the Juſtices of the one Bench or other ſhould take no Reward, nor be of any Man's Fee, may be obſerved. Anſwered, the King hath and will charge ſuch Juſtices to miniſter Right, and will puniſh the contrary, and therefore willeth that all Statutes made touching them and the *Barons* of the Exchequer be made void [16]. *Legis Scriptorem* [17] &c. " The Law-" givers have ordained *Judges* to be choſen out of a certain Rank of Men, and of a determined " Age, that ſo there might be Perſons appointed, who ſhould not only repeat the Letter of the " Law, but ſhould be able to find out the Deſign of the Lawgiver, and explain it according to " his Will." V. *Hale* 68. v. *Fort.* 117. N. b. *Dudg.* c. 19. *Gerv. Tilbur.* publiſhed by Mr. *Madox*, p. 54. (pp.) *Somner* ad v. *Baro. Hickes*, g. a. 146. *Tyrrel*, II. Introd. XCIII. W. 557. *Whitl.* M. 344. & ſeqq.

(k) *Birrettum*] It is alſo called *Birrus*, *Birreta*, tegmen capitis, Pileus [18]. Servos ſane omnium, quorum tamen Dominos Sollicitudine militiæ conſtat non teneri, aut *birris* uti permittimus aut cucullis [19]. *Bireta coccinea*, Cardinalium petaſus. *Birrettum album*] capitis tegmen lineum, tenue, ſtrictum; formâ ipſius cranij, vel caſſidis. Hoc inſigniuntur Qui ſupremam in jure noſtro palmam ferunt, *Servientes ad Legem* dicti [20]. *Coifa*] Coifam vocat juxta *Gallicum* [21]. Infimæ Latinitatis Scriptoribus pro capitis velamento & pileolo uſurpabatur [22], erat Pontificum, erat etiam Doctorum [23]. " Non Cappa quippe Doctorem facit, non *birreti* magiſtralis impoſitio. Conſtat quod anno 1170. & ante, ejus uſus fuerit. *Pitiſc. Somner.*

---

[9] Chron. *Tho. Wilkes.* Scriptt. ed. a *Gale*, II. p. 78. [10] *Matt. Par.* p. 119, 29. [11] Ib. 627, 65. [12] Ib. 646, 9. [13] D. 7. p. 451. — Hiſt. I. Int. XCVII. * — III. *Int.* 11. [14] *Spelm.* Reliq. 220. — 71. a. *Du Freſne*, I. 542, 3. [15] *Flera* L. 2. c. 26. *Matt. Par.* 564, 53. [16] 3 *Inſt.* 147. *Cott.* Abr. 317. [17] *Cic.* Lib. 2. de Inventione 47. (139) V. 91. a. [18] *Cod. Theodoſ.* de habitu quo uti oportet extra urbem. [19] *Spelm.* 82. a. [20] *Matt. Par.* 844, 27. 29. Gl. ib. ad v. [21] *Du Freſne. Pitiſc.* [22] Ib. [23] *Nicholaus de Clemengis*, de Studio Theologico. *Du Freſne.*

enriches Himſelf ſo much by his Practice as a **Serjeant at Law**: No one, be He never ſo well read and practiſed in the Laws, can be made a Judge in the Courts of *King's Bench*, or *the Common Pleas*, which are the Supreme Ordinary Courts of the Kingdom, unleſs He be firſt called to be **a Serjeant at Law**: Neither is any one, beſide a **Serjeant**, permitted to plead in the Court of *Common Pleas*, where all real Actions are pleaded: Wherefore, to this Day, no one hath been advanced to the *State* and *Degree* of a **Serjeant at Law**, till He hath been firſt a (l) *Student*, and a *Barriſter*, full Sixteen Years: Every **Serjeant** wears in Court a *White Silk Coif*, which is a Badge that they are *Graduates in Law*, and is *the Chief Enſign of Habit* with which **Serjeants at Law** are diſtinguiſhed at their Creation. Neither ſhall a *Judge*, or a **Serjeant at Law**, take off the ſaid *Coif*, tho' he be in the Royal Preſence and talking with the King's Majeſty. So that you will eaſily believe, *Moſt Excellent Prince*, that thoſe Laws which are ſo Honoured and Diſtinguiſhed beyond the *Civil Laws*, or thoſe of any other Kingdom whatſoever, and the Profeſſion whereof is attended with ſo much Solemnity and Magnificence, are in themſelves exceeding Valuable, Excellent and Sublime, full of Knowledge, Equity and Wiſdom. [*Dugd.* 111. & ſeq.

(l) It may be objected here that our Author makes no mention of *Student* or *Barriſter*, neither is it preciſely known whether, at that Time, the Degree of *Barriſter* was confer'd or not, but it is very probable that the ſame regular Steps might be taken, in order to qualify Perſons to practice in the Courts of Law, as have been obſerved ſince that Time. The Reaſon is the ſame. Mr. *Selden*, in his Note ad Cap. VIII. (2) makes mention of the *Students in the Civil Law* of 2, 3, 4 and 5 Years ſtanding, and ſeems to hint that an **Apprentice at Law** is a Degree; He quotes 1 *Ed.* 3. fol. 17. a. pl. 3. alſo a Monument of Parliament 20 *Ed.* 1. *Fleta*, lib. 2. cap. 37. and the Epiſtle of the 9 *Reports*, where more is out of Antiquity touching theſe **Apprentices**, whom I judge to be, what they now call, **Barriſters**.

CHAP. LI.

Of the Judges of the Courts in Weſtminſter-Hall.

THAT You may likewiſe know the Eſtate of the *Judges*, as well as of the **Serjeants at Law**, I will, in the beſt Manner I can, lay before you the Method of their Appointment, Creation, and the Nature of their Office. There are uſually in the Court of Common Pleas (a) *Five* Judges, *Six* at the moſt; in

4

(a) It ſeems by Our Text that there have been *Six* at a Time, and Mr. *Camden* [1] ſays, in the Court of *Common Pleas* are the Chief Juſtice and four others, or more, to aſſiſt him. The certain fixing of the Court of *Common Pleas* at *Weſtminſter*, occaſioned much more Reſort thereto than before; for about the beginning of E. II. Reign, there were ſo many Suits therein, that the King was neceſſitated to increaſe the Number of his Juſtices, who were to ſit there, unto *Six*, which commonly were not above *Three* before that Time; and ſo to divide them as they might ſit in two Places [2]. That there have been in late Reigns any more than *Five*, with the Chief Juſtice, I can't find; ſometimes there have been fewer. W. v. *Du Freſne*, To. 2. pt. 2. 197. ad v. *Juſtitiarius*. *Dugd.* c. XVIII. — ib. 39. a. *Whitl.* M. 344, 392.

[1] Of the Courts of *England* CLXXXV.

[2] *Dugd.* 39. b. — Chronica Series 34, 114.

in the Court of (b) King's Bench *Four*, and ſometimes *Five*: When any one of them dies, (c) *reſigns*, or is ſuperſeded, the King, with the Advice of his Council, makes choice of one of the **Serjeants at Law**, whom He conſtitutes a Judge, by his *Letters Patents*, in the room of the Judge ſo deceaſed, reſigning or ſuperſeded: Which done, the (*) (d) *Lord High Chancellor* of *England* ſhall come into the Court where ſuch Vacancy is; bringing in

(b) *Banco Regis*, **The King's Bench**] This is the firſt and higheſt Court of Law, becauſe the Kings of *England* were wont to preſide in that Court and ſit there in Perſon [3], and the Returns are *coram me ipſo:* It takes Cognizance of all Pleas of the Crown, and ſuch other Matters which relate to the King and the Commonwealth; it has Power to examine and correct the Errors of the Common Pleas. The Judges there, beſides the King Himſelf, when He is pleaſed to be preſent, are the Lord Chief Juſtice of *England* and Four others, or more, as the King pleaſes [4]. Anciently this Court followed the King's Court, it was kept in Aulâ Regiâ, *Gotzelin* in the Life of St. *Edward*, calls them *Palatii Cauſidici*; and Johannes Sarisburienſis, *Curiales*. The Lord Chief Juſtice was called *Juſtitia Angliæ* and *Juſtitiarius Angliæ Capitalis* [5]. The Judges of this Court are called by Sir *Edward Coke* [6], the Sovereign Juſtices of Oyer and Terminer, Gaol-Delivery and Conſervation of the Peace in the Realm [7]. So Supreme is the Juriſdiction of this Court, that if any Record be removed into this Court, it cannot be remanded back, unleſs it be by Act of Parliament; this appeareth by the Stat. 6 *Hen.* VIII. c. 6. 4 *Inſt.* 73.

. . . . . niſi prius Dominus Rex, ſi in regno fuerit, conveniatur, vel *Juſtitia ejus*, ſi fuerit extra regnum. Ubi *Seldenus* [8]: " Qui velut *Præfectus Prætorio* aut *Pro-rex* Regias illo ævo vices " agebat, & *Capitalis Angliæ Juſtitiarius* indigitabatur. In auctioribus *Holinſhedi* Chronicis 17 E. I. ubi occurrit mentio de *Radulpho de Hengham*, Qui diminutâ jam *Capitalis Angliæ Juſtitiarij* amplitudine, *Capitalis Juſtitiarius Banci ſuperioris*, i. e. *Regij* appellatus eſt; ſubjungitur, ac ſi integer permanſiſſet magiſtratus, iſta clauſula: *Ad quem in Abſentia* Regis, *Regni moderamen præcipuè attinebat.* [9] In *Matth. Weſtminſter* [10], Hugh Bigot is called, " Vir Fideliſſimus, *Capi-* " *taliſque* totius *Angliæ Juſtitiarius* [11]. Walterus Rothomagenſis *Capitalis* Angliæ *Juſtitiarius* [12]. *Specialis Angliæ Juſtitiarius* [13]. Odo, Biſhop of *Baieux*, is called, *Juſticier and Chief Man* of all *England* [14]. Ranulph de Glanvil, *Juſticier of England* [15]. In the Time R. I. William de Longchamp, Biſhop of Ely, *Chief Juſticier*, Chancellor and Papal Legate in *England*. *Madox*, H. Excheq. 15. *Sadler* 229, 249.

" *Jacobo* regnante, ægre latum ſit, quod *Edwardus Cokus*, in Relationum ſuarum Frontiſpicio " ſe inſigniret Titulo *Capitalis totius Angliæ Juſtitiarij*; etſi vulgarem ſequeretur morem, & " rationis quidem haud expertem. *Angliam* enim *totam*, quoàd pacem regiam & Coronæ Digni- " tatem, nonnullaque alia promovenda, adhuc retinet in Juriſdictione *Capitalis Ille Juſtitiarius*, " emittens etiam uſque regni terminos mandata ſua. ANGLIA — titulum præfigit in Margine, " *Juriſdictionis indicium.* Sed & non dedignata ſunt diverſa Parlamenta ipſum, licet primævâ " Spoliatum amplitudine, noſtro ævo *Capitalem Angliæ Juſtitiarium* agnoſcere & nominare, ut vi- " dere eſt in Stat. [16] *Hen.* VIII. & in Decreto ſuper eodem Stat. *Richard Liſter*, Kt. is called *Chief Juſtice of England* [17], & Statuto privato [18] citato in novo Lib. Intrat. Tit. Action Sur Le Caſe §. 5. &c. *Du Freſne*, To. 2. pt. 2. 190. N. *Bacon*, pt. 1. c. LXI. *Fort.* 64. *Dugd.* c. VII. 23. b. 25. a. b. 38. b. *Somner* ad. v.v. *Bancus. Juſtitiarius.* v. *Madox*, Excheq. 21. v. Coll. relating to Sir F. *Bacon*'s Life, Fol. p. 65.

(c) Sir *Matth. Hale* formally ſurrendered his Office in an Original Deed, drawn by Himſelf, written all with his own Hand. See Biſhop *Burnet*'s Life of Him, p. 54.

(*) *Whitl.* M. 344, 392. *Burnet.* Ref. II. 380.

(d) *The Lord High Chancellor.* The Keeper of the Seals. (" For in *Hen.* VI. Time there " were *Three* Seals in the Cuſtody of the *Chancellor*, One of Gold, the other Two of Silver. At " this Day only *One* Seal is delivered to the *Chancellor* [19].") Signer of the King's Grants. Preſenter to his Promotions, the Judge in Equity. This is the Chief Place of Civil Employment in this Realm [20]. Mr. *Madox* obſerves, that the Office of *Chancellorſhip*, from a Small Beginning, became, in Proceſs of Time, an Office of great Dignity and Preeminence. H. E. p. 43. v. ib. 41. — 54. W. v. *Dugd.* 35, 6. *Tyrrel*, I. Introd. LXXIII. *Rapin*, II. 149. Lord *Macclesfield*'s Tryal 270. a. *Sadler* 312.

Regis Scriba à *Normannis* Scriptoribus *Cancellarius* dictus eſt; Qui in Aula, non in Foro, officio ſuo functus eſt. Politia Forenſis apud *Anglo-Saxones* Brevium Officinam (*Cancellariam* ſc.) non requiſivit; utpote, apud quos Cauſæ omnes liteſq; Domi cognitæ & determinatæ eſſent, i. e. in Singulis *Centurijs*, *Trithingis*, *comitatibus*, *urbibus*, & *Curijs Dominorum*, quorum jus audiendi

[3] Ante c. 8. N. (3) [4] *Camd.* ubi ſup. [5] Ib. [6] 4 *Inſt.* 73. [7] 9 *Co.* 118. a. b. Lord *Sanchar*'s Caſe. [8] *Eadmer.* 168. — Opp. II. 1636. v. *Madox*, Excheq. 21. [9] *Du Freſne* ad v. *Juſtitiarius.* [10] An. 1259. p. 282. [11] *Gerv. Tilbur.* 16. (e.e.) 26. v. *Brooke*, Diſc. Errors 179. [12] X. Scriptt. 669, 36. 670, 18. [13] Ib. 671, 56. [14] *Madox*, ubi ſup. 6, 22. [15] Ib. 14. [16] 24, 5 H. 8. c. 26. §. XII. — 37 H. 8. c. 12. [17] 18 *El.* 12. [18] 23 *El.* 5. [19] *Camd.* of the Courts of *England* CLXXXVII. [20] *Dugd.* 111. b.

in his Hand the ſaid *Letters Patents*, ſitting on the Bench, together with the Judges of the Court, He introduces the Serjeant who is ſo appointed to be a Judge; to whom, in open Court, He ſhall notify the King's Pleaſure concerning his Succeſſion to the vacant Office, and ſhall cauſe to be read in Publick the ſaid Letters Patents: After which, the Maſter of the Rolls ſhall read to him the Oath of Office; when He is duly ſworn into his ſaid Office, the *Chancellor* ſhall give into his Hands the *King's Letters Pateuts*, and the *Lord Chief Juſtice* of the Court ſhall aſſign him his Place where He is to ſit, and makes him ſit down in it. But You muſt know, *My Prince*, that the Judge, amongſt other Parts of his (e) Oath, is to ſwear, that He ſhall do equal Law and Execution of Right to all the King's Subjects, Rich and Poor, without having Regard to any Perſon. Neither ſhall He delay any

& finiendi cauſas, *Sac & Soc* [21] eſt appellatum [22]. Ab ingreſſu *Normannorum* Curiæ Comitatuum dignitatem ſuam priſtinam, aliquandiu retinuerunt uſq; ad *Henrici* [23] II. tempora, cum *Juſtitiarij Regis* non amplius in Comitatus ad audiendas Cauſas legati eſſent: Sed Cauſæ, quæ in *Scyris* vel *Comitijs* placitari & terminari ſolebant, coram *Comite*, vel ejus *Vice-comite* ante adventum *Normannorum*, & poſteà a *Regis Juſtitiarijs*, tum primùm ab ijs *ad Curiam Regis*, coram *Juſtitiario* ejus audiendæ tractæ & ablatæ erant. Cauſis autem a *Scyris* ad *Curiam Regis* ſic tractis, creſcebat indies querelantium numerus, qui ad Dominum Regem, vel Juſtitiarios ejus de Injurijs factis clamarent. Delatis vero ab omnibus regni partibus ad *Curiam Regis* querelis, *Cancellarius*, qui ab *Epiſtolis*, *Chartis* & *reſcriptis* Regi erat, ex Aulico duntaxat miniſtro factus Curiæ Regis *Officialis*, augere numerum Scribarum neceſſe habuit & Collegium q. ſub ſe inſtituere; in quo, tanquam in communi regni Officinâ, reſcripta Forenſia, à noſtris dicta, *Brevia Originalia*, formarentur. Hic ortus, Hæc origo fuit Cancellarij, ut Magiſtratus Forenſis, qui in Scaccario à Siniſtrâ Juſtitiarij regij, paulum procedente tempore, *adſeſſor* ſedere ſolebat; adeo ut in eo ſine illius conſenſu, & conſilio, haud longè a primis iſtis *Cancellariæ* initijs, nihil magni momenti factum eſſet. *Hickes*, d. e. 48. v. *Glanvil.* L. 1. c. 1. — 4. v. *Madox*, H. Ex. 59.

Cancellarius Angliæ aut *Cuſtos magni Sigilli*, quorum eadem prorſus eſt authoritas, ad cujus æquitatem ab alijs Tribunalibus, ante latum Judicium, omnibus ordinario juris remedio deſtitutis, provocare licet, nullis Legibus aſtrictus eſt, quo minus Cauſam quamlibet hoc nomine ad eum delatam, juxta boni viri arbitrium dirimat & componat: Eumq; Qui Decreto ſuo refragatur, in carcerem conjiciat, & illic detineat, donec Scito ſuo ſe ſubmiſerit. *Cowell*, Inſt. 281, 2. v. ib. 289, 290.

The Word (*Cancellarius*) had once a quite different Signification than what it has at preſent; I find a Paſſage in *Vopiſcus*, in his Life of *Carinus* [24], where in giving an Account of the Enormities of that Emperor, the Hiſtorian ſays, " Præfectum urbi unum ex *Cancellarijs* ſuis fecit; " quo fœdius nec cogitari potuit aliquando, nec dici." Qui *cancellos* ſervabant *Cancellarij*, ſay *Salmaſius* and *Caſaubon*; " Qui ad hujuſmodi *cancellos* ſtabant *Oſtiarij*, Cancellarij dicebantur." Their Buſineſs was to repel or admit thoſe who deſired to have an Audience of the Prince. It was indeed ſcandalous to make ſuch a one *Præfectus Urbis*; which was the firſt Poſt in the Empire, or, at leaſt, was a Place of great Honour and Authority; However, as *Salmaſius* obſerves, theſe *Cancellarij* in the Time of *Caſſiodorus*, that is, not much more than Two Hundred Years after *Carinus* [25], came to be what We call now *Secretaries of State*, an Office, which, as Lord *Clarendon* ſays, with Relation to *England*, was not always of that Magnitude it is now. Thus it is, Words change their Original Meaning; And as whatever Poſt gives Acceſs to the Prince, tho' never ſo mean, is always conſiderable; ſo theſe *Oſtiarij*, theſe *Cancellarij*, from Pages to the Prince, came to be *Secretaries of State*, *Lord Chancellors*, and *Firſt Miniſters*. V. *Pitiſc.* ad v. Cancelli. *Calvin. Am. Marcellin.* Gron. XXX. 4. p. 646.

(e) See the Oath of a Judge in the Stat. *Ed.* III [26]. A Modern Form of the Ceremoniale ſee in *Croke*'s Reports [27], when Sir *John Brampſton* was made Chief Juſtice of the King's Bench. The Judges Oath in the Time of *Hen.* III. was, that they ſhould judge *Secundum Legem & Conſuetudinem regni*; which Words (as Mr. *Selden* [28] ſays) ſeem deſignedly to exclude the *Jus Cæſareum*, then lately brought in: Whereof, as He ſays, ſome were fond in thoſe Times; and he tells Us of what Order they were, but they were not Common Lawyers, nor Judges, but the *Hierarchy* [29]. The Famous Sir *Matthew Hale*, a Man of general Learning, and of profound Knowledge in the Laws of *England*; whoſe whole Life was one continued Thread of Sincere and

[21] V. ante c. 44. N. c. [22] *Hickes*, d. e. 48. [23] *Spelm.* Reliq. 58. [24] C. 16. v. *Caſaubon*, & *Salmaſ.* ad Loc. [25] *Carin.* regn. circ. An. 283. v. *Fabric.* Bibl. Lat. I. 651. — III. 219. [26] 18 *Ed.* III. St. 4. A. D. 1344. (*Keb.* p. 110.) In Dorſo Clauſ. de Anno 20 *Ed.* 3. Part. Prima. [27] *Cro. Charles* 403. [28] Diſſert. *Fleta* 540. [29] Sir *Robert Atkins* of the Diſpenſing Power 42, 3.

any Perſon of common Right, for the Letters of the King, or of any other Perſon, nor for any other Cauſe, tho' the (*) King by his expreſs Directions, or Perſonal Commands, ſhould endeavour to influence and perſuade the contrary. He ſhall alſo ſwear, that He ſhall not take by Himſelf, or by any other, privily, ne a-apart, any Gift or Reward of Gold, or of Silver, nor of any other Thing, the which might turn him to Profit, unleſs it be Meat or Drink, and that of little Value, of any Man that ſhall have any Plea, or Proceſs, hanging before him, and that he ſhall take no Fees, as long as He be Juſtice, nor Robe of any Perſon, great or ſmall, in any Caſe, but of the King Himſelf. You are to know moreover, that the Judge ſo created is not to make any Solemn Entertainment, or be at any extraordinary Expence upon his Acceſſion to his Office and Dignity; becauſe it is no *Degree* in Law, but only an Office and a Branch of Magiſtracy, determinable on the (f) King's good Pleaſure. However, from thenceforth, He changes his Habit in ſome few Particulars, but not in all: For when only a **Serjeant at Law**, He is cloathed in a long Robe, not unlike the Sacerdotal Habit, with a (g) *Furred Cape* about his Shoulders, and an Hood over it, with Two Labels or Tippets: Such as the *Doctors of Law* uſe in ſome Univerſities, with a *Coif*, as is above deſcribed. But after He is made a Judge, inſtead of the Hood He ſhall be habited with a (h) *Cloak*, faſtened upon his right Shoulder; He ſtill retains the other Ornaments of a **Serjeant**, with this Exception, that a Judge ſhall not uſe a (i) party-coloured

and Underſtanding Juſtice, and who was not to be warp'd from his conſtant Road of Integrity: *An exact Standard*, whereby future Princes may meaſure the Qualifications of their Judges; He was a Man ſo far from being ever impeached by the Repreſentative Body of the Nation, that no one ſingle Perſon was ever heard to complain of his Conduct. This Great Man was ſo ſcrupulous and ſtrict, and had ſet ſuch Rules to Himſelf; that when a Gentleman had ſent Him a Buck for his Table, who had a Trial at the Aſſiſes, He would not ſuffer the Trial to go on till He had paid Him for his Buck, upon which the Gentleman withdrew the Record. At *Salisbury* the Dean and Chapter having, according to the Cuſtom, preſented him with Six Sugar Loaves in his Circuit, he made his Servants pay for the Sugar before he would try their Cauſe. *Burnet*'s Life of him, p. 33, 4. v. *Fort.* Pref. XII. ib. 110, 136. 3 *Inſt.* 145. Sir *Robert Atkins* of the Diſpenſing Power, p. 13. *Cowel*, Inſt. 307. v. *Fleta*, L. 1. c. 17. v. 23 *Hen.* VIII. 24.

(*) *Whitl.* M. 345. a. v. Stat. 2 *Ed.* III. c. 8. Whitl. ubi ſup. plura 14, 15. v. ante hic p. †.

(f) By the Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject, it is enacted, that ſome further Proviſion be made for ſecuring Our Religion, Laws and Liberties, from and after the Death of his Majeſty and the Princeſs *Anne* of *Denmark*; and in Default of Iſſue of the Body of the ſaid Princeſs, and of his Majeſty reſpectively, that in ſuch Caſe after the ſaid Limitation ſhall take Effect, as aforeſaid, Judges Commiſſions be made, *Quamdiù ſe bene geſſerint*, and their Salaries aſcertained and eſtabliſhed: But, upon the Addreſs of both Houſes of Parliament, it may be lawful to remove them. 12 & 13 W. 3. c. 2.

(g) *Capitium penulatum*] A caped Rocket, or Short Cloak, furred in the Cape. *Deſuper Collobio*] this imports a Cowl, Tippet or Hood, which was proper to Monks, Hermits, Soldiers and Countrymen; who, becauſe they encounter hardſhips, had theſe *ſuper humeralia* to defend them [30]. W. *Penulatus*] i. e. furred, 'tis the ſame with *foderatus* [31]. *Capitium*] An Hood — Lacerna cum Cucullo [32]. — Ea Veſtis pars quæ ad os Tunicæ collum circum amicit, humeris injecta. *Du Freſne*, ad v.v. *Capitium. Caputium.*

(h) *Chlamys*] Was firſt a *Military* Garment, then *Imperial*, and afterwards a *Judicial* Robe. A Garment beſtudded with Flouriſhings of Gold and purple Silk, in Manner of broad Nail-heads, whence it was called *Laticlavia* [33]. Chlamys, inter præcipua ſummi Pontificatus inſignia, in *P. Diacono*, lib. 3 [34]. *Chlamys* non aliud quam veſtimentum, quod tunicæ ſuperindueretur & fibulâ in humeris nectebatur — aliquando clavis ornari ſolebat. *Pitiſc.*

(i) *Stragulata Veſtis*] Veſtis diſcolor, plumario opere facta: Hinc *Stragula* veſtis, *Stragulare*, variare.

† *Matth. Paris* 833, 41. an. 41 H. 3. — Edit. altera Fo. 971. *Whitl.* M. 345, 6. [30] V. *Spelm.* ad v. *Collobium.* [31] *Blount.* [32] *Pitiſc.* [33] *Godwin.* Ro. Antiqq. 150, 1. [34] *Du Freſne.*

coloured Habit, as the **Serjeants** do, and his Cape is furred with (k) *Minever*, whereas the Serjeant's Cape is always furred with White Lamb; which ſort of Habit, when *You* come in Power, I could wiſh *Your Highneſs* would make a little more Ornamental, in Honour of the Laws, and alſo of Your Government. You are to know further, that the *Judges of England* do not ſit in the King's Courts above three Hours in the Day, that is, from Eight in the Morning till Eleven. The (l) Courts are not open in the Afternoon. The Suitors of the Court betake themſelves to the, m(33), *Perviſe*, and other Places, to adviſe with the **Serjeants at Law**, and other their Counſel, about their Affairs. The

variare. Gloſſ. *Arabico-Lat. Stragulo* vario. *Stragulati*, radiati, vel Birrati ſeu potius Barrati Fratres, dicti olim *Carmelitæ*, quòd veſtibus diverſo colore variatis uterentur. *Du Freſne. Dugd.* 99. b. Stragula Amphibapha. Judges, c. 4. v. 18. Junius & Tremel.

(k) *Meneverum*] Jo. *Forteſcutus* de Laud. ubi expreſſit noſtrum *Menuvair* [35]. *Menuver*, ou verd. The Fur *Minever*; alſo the Beaſt which bears it [36]. *Miniver* (une Sorte de fourrure blanche) *Menu-ver* [37]. *Minever*, a Franco-Gallica *Minuver*, *Menuvair*, Pellis muris cujuſdam *Pontici* ad ſuffulciendas veſtes hibernas expetita [38]. Of the *Pontique Mouſe* ſee *Geſner* [39], called *Varius* by * *Idorus*, from whence cometh the German Word **Uiutrch**; from the Diverſity of the Colour **Gzan-Uuercke**. This *Pontique Mouſe* differeth from others only in Colour; for the White is mingled with Aſh-Colour, or elſe it is ſandy and black; in *Poland*, at this Day, they are found Red and Aſh-Colour. The *Polanders* have four Kinds of precious Skins of Mice which they uſe in their Garments; the firſt of Griſſel Colour; the Second, a very White Beaſt all over, except the Tip of the Tail, which is all black; the third, White mingled with Griſſel; fourth, of a bright Cheſnut Colour, and this is the Squirrel: For they call Squirrels, Weaſels and *Hermelin* all by the Name of Mice. The Skins are ſold by ten together; There are two of the beſt Sort, the third a little worſe, four of the next Sort, three of the vileſt Sort. With theſe Skins they hem and edge Garments; and in ſome Places they make *Canonical Garments* of them for *Prieſts*, unto which they ſew their Tails to hang down on the Skirts of their Garments. The *Commentator* takes it to be either the Skin of a little Beaſt bred in *Germany*, or of a *Ruſſia* Squirrel. It is that which is uſed in lining Hoods and Garments of Graduates in Arts. *Meniver*, a kind of Fur, being, as ſome think, the Skin of a Squirrel's Belly, or, as others, of a little White Beaſt (like to a Weaſel) breeding in *Muſcovy*. White Furs of *Minever*. Bellies of *Minever*. *Dudg.* cap. XXXVIII. pp. 98, 101. & alibi.

(l) In the **Common Law** there be *Dies Juridici*, and *Dies non Juridici*: Dies non juridici ſunt, Dies Dominici thro'out the Year. This was the Ancient Law of *England*, and extended not only to Legal Proceedings, but alſo to Contracts. "*Dacus* ſi Die Dominico quicquam "fuerit Mercatus, re ipſa, & † Oris præterea duodecim mulctator. *Anglus* triginta ſolidos nu- "merato [40]." In *Eaſter* Term, the Day of the Aſcenſion: In *Michaelmas* Term, the Days of All Saints and All Souls: And in *Hillary* Term, the Day of the Purification are, *Dies non juridici*. And it ſhould ſeem here by our A. that there be alſo *Horæ juridicæ* [41]. It is an Abuſe that Pleas are holden upon Sundays, or other Days forbidden, or before Sun-riſing, or in the Night Time in diſhoneſt Places. The *Mirrour*, c. 5. §. 1. Art. III. *Fort.* Pref. XLVIII. *Spelm.* Reliq. 71, 86, 89. *Wilk.* 11. N. e.

† *Ora*] See the Books in the Margin [42]. ORA, ane auld Saxon Word, and ſignifies Mettall, like as braſſe or golde: And mairover in auld times it was ane peece of cunzied Silver, or Gold; for *tres oræ aureæ* are the Price of ane Cow. Stat. *Alex.* II. or King *David* I [43]. *Ora*, nummus vel computandi Ratio à *Danis* mutuatus [44], valoris, ut videtur, 2. Solidorum [45]. Mr. *Selden* ſays Twenty Pence made an *Ore* commonly; and ſometime, according to the Variation of the Standard, Sixteen Pence was an *Ore*; but in *Oxfordſhire* ſpecially, and *Gloceſterſhire* in *Domeſday*, Twenty go to an *Ore*. *Seld.* III. 1182.

m (33) *Ad Perviſum*] This *Chaucer* remembers in his Sergeant.

A Sergeant at Law ware and wiſe,
That often had been at the Perviſe.

It ſignifies an Afternoon's Exerciſe or Moot, to the Inſtruction of Young Students, bearing the ſame Name originally (I gueſs) with the *Parviſiæ* in *Oxford*, as they call their Sitting Generals in the Schools in the Afternoon; which ingenuouſly I confeſs I firſt learned out of Mr. *Wake* his

[35] *Du Freſne.* [36] *Cotgrave, Howell.* [37] Ib. & *Miege.* [38] *Skinner.* [39] P. 532, 3. * Forſan Iſidorus Hiſp. [40] V. Stat. 27 *Hen.* V. 6. [41] 1 *Inſt.* 135. a. 2 *Inſt.* 264, 5. [42] *Somner, Fort.* 82, 3. *Chron. Pretioſum* 32. *Camd.* 99. — Remains 168. *Cowell*, Int. *Hickes*, d. e. 21. 111, 112. [43] Lib. 4. c. Sciendum 63. *Skene* de verb. ſignif. ad v. [44] Sir *And. Fountaine* in *Hickes*'s Theſ. [45] *Du Freſne. Spelm.*

The *Judges* when they have taken their Refreſhments ſpend the reſt of the Day in the Study of the Laws, reading of the Holy Scriptures, and other innocent Amuſements, at their Pleaſure: It ſeems rather a Life of Contemplation than of much Action: Their Time is ſpent in this Manner, free from Care and Worldly Avocations. Nor was it ever found that any of them has been corrupted with (n) Gifts, or Bribes. And it has been obſerved, as an Eſpecial Diſpenſation of Providence, that they have been happy in

his *Muſæ Regnantes, pag.* 125. where he divides the *Quodlibets*, or *Diſputationes Magnæ*, which are their Exerciſes of Regent Maſters in the Forenoon, from *Parvæ*, that is Scholars Exerciſe in the Afternoon. *Has* (are his Words) *quia ijs inferiores*, Parvas, *jam etiam corrupto nomine*, Parviſias *dicere conſuevimus*. Seld.

. . . . . V. Cl. *Iſaacus Wakus* [46], in *Muſæ regnantes*, de Jac. I. R. ad Oxon. adventu, Auguſt 27th, 1605. *Somner*. v. *Wood*'s Athenæ, I. 342, 573, 4. *Camd.* Annal. Jac. I. 1619. Epiſt. ſub finem, p. 44. *Kennett*, II. 651. b. *Fuller*, W. 286. *Eachard*, II. ſub an. 1632. p. 101. *Collier*'s Supplement.

Perviſum] This refers (not to the *Perviſe-Exerciſes* of *Academic* Origine) but to the Place and Time of Conſultation, which Clients uſe to have with their Counſel about their Pleadings, &c. *Perviſum*, q. *Peruſal*. W. [47] *Paradiſus*] Atrium porticibus circundatum ante ædes Sacras. *Gr.* Locus porticibus & deambulatorijs circundatus, noſtris, vulgò, *Parvis*. De vocis, *Paraviſus*, etymo, v. quæ habet *Somnerus* [48]. *Parvis*] The Porch of a Church, alſo (or more properly) the Outer Court of a Palace, or great Houſe [49]. *Spelman* [50] has it, "ibi *Legis periti* convenere ut Clien-"tibus occurrerent, non ad Tyrocinia juris, quas *Motas* vocant, exercenda." *Dugdale* [51] mentions the *Pervyſe of Pawles*. Formerly each Lawyer and Serjeant, at his Pillar in St. *Paul*'s Church, heard his Client's Cauſe, and took Notes thereof upon his Knee, as they do in *Guildhall* at this Day; And, after the *Serjeants* Feaſt ended, they do ſtill go to *Paul*'s in their Habits, and there chooſe their Pillar, whereat to hear their Client's Cauſe (if any come) in Memory of that old Cuſtom. *Dugd.* 142. a. *Cowell*, Int. *Whitl.* M. 348.

(n) This is not to be underſtood in Strictneſs of Speech: Our A. well knew the Caſes of the Four and forty Judges hang'd in One Year in *England*, as Murderers for their corrupt Judgments [52]; neither could He be a Stranger to the Proceedings in King *Edward* I. Time *, or to that againſt Sir *William Thorpe* in the Reign of *Edward* III †. Nor to that of the Lord Chief Juſtice *Treſilian*, who was hang'd at *Tyburn*: And all the reſt of the Judges of *England*, ſave One, were baniſhed in King *Richard* the IId's Time.

Cambyſes King of *Perſia*, finding that one *Siſamnes*, his Chief Juſtice, had been guilty of Bribery and Corruption, and pronounced an unjuſt Sentence; there is related this remarkable Inſtance of that King's Juſtice towards him, that he cauſed him to be flea'd alive, and making with his Skin a Covering for the Seat of the Tribunal, made his Son, whom He appointed to ſucceed him in his Office, to ſit thereon; that being thus put in Mind of his Father's Puniſhment, he might thereby be admoniſhed to avoid his Crime. Dr. *Prid.* Connect. I. 196. 8vo. *Chronicon Carionis*, L. 2. p. 19. **.

Amongſt the noble Acts of King *Edgar*, it is recorded, as none of the leaſt Memorable, that in his Circuits and Progreſſes thro' the Country, he would take Account of the Demeanour of his Lords, and eſpecially of his Judges; whom he ſeverely puniſhed if he found them Delinquents. *Baker*, Fo. 11. *Rapin*, I. 393.

The Hiſtory ſays of †† *Ed.* I. that his firſt Care, immediately after his Return into *England*, Auguſt 1289. (He having been three Years beyond Sea) was to reform ſeveral Abuſes which had been introduced in his Abſence; particularly in the *Adminiſtration of Juſtice*. Upon Complaints made to him from all Hands, that the *Judges* had ſuffered themſelves to be corrupted with Bribes, he ſtrictly examined into their Conduct, and ſeverely puniſhed the Guilty. In the Number of whom was (Sir *Thomas Weyland* ‡) the *Chief Juſtice*, or *Firſt Judge*, who was baniſhed the Realm, and his Eſtate confiſcated. Theſe Miſdemeanors, which had been but too frequent, gave the King Occaſion to conſtrain the Judges to ſwear, that for the Time to come they would take neither Money nor Preſent of any Kind, except only a Breakfaſt, which they might receive, provided there was no Exceſs. *Speed* has given us the Names and the Fines, viz. Sir *Ralph Hengham*, 7000 Marks; Sir *John Lovetot*, 3000; Sir *William Brompton*, 6000; Sir *Solomon Rocheſter*, 4000; Sir *Richard Boyland*, 4000; Sir *Thomas Sodentone*, 2000; Sir *Walter Hopton*, 2000; Sir *William Saham*, 3000; *Robert Littlebury*, Clerk, 1000; *Roger Leiceſter*, Clerk, 1000; *Adam de Stratton*, 32,000. *Rapin*, IV. 29, 30, 112. 2 *Inſt.* 508. 3 *Inſt.* 846, 7 ‡‡.

[46] *Somner* ad v. *Triforium*. [47] V. *Matth. Paris* 690, 19. Gl. ib. Statt. *Oxon.* Tit. 6. §. 3. p. 23. [48] Ubi ſup. *Du Freſne*. [49] *Cotgrave*. *Miege* Fr. Dict. *Skinner*. Et. Voc. Antiqq. [50] Ad v. *Parvæ*, &c. [51] 195. b. [52] *Horn*'s Mirrour, p. 296. of the *Fr.* & p. 239. of the *Eng.* Edit. *Rapin*, I. 343. * 3 *Inſt.* 146, 7. † Ib. 145, 223. ** Coll. Lord *Bacon*'s Life 124. †† V. Pref. to Roll's Abr. ‡ *Tyrrel*, III. p. 56. ‡‡ See in the Hiſtories the Caſe of *Hubert de Burgo* 11 *Hen.* III.

in leaving behind them immediate Deſcendants in a right Line. " Thus

Sir *William Thorpe*, Chief Juſtice of the King's Bench in K. *Edw.* the Third's Time, having of five ſeveral Perſons received five ſeveral Bribes, which in all amounted to 100 *l.* was for this alone adjudged to be hang'd, and all his Goods and Lands forfeited. 3 *Inſt.* 145, 223. *Whitl.* M. 346.

The Reaſon of the Judgment is entred in the Roll in theſe Words. — " Quia prædictus *Wil-* " *lielmus Thorpe*, qui Sacramentum Domini Regis erga populum ſuum habuit ad Cuſtodiendum, fre- " git malitioſè, falſè & Rebelliter quantum in ipſo fuit." Becauſe, that as much as in him lay, he had broken the King's Oath, made to the People, which the King had intruſted him withal.

And ſo much did the then Collective Wiſdom of the Nation reſpect Judges herein, that 'tis expreſsly entred, that this Judgment ſhould not be drawn into Example againſt other Officers who ſhould break their Oaths, but only againſt thoſe " Qui prædictum Sacramentum fecerunt & fre- " gerunt & habent Leges *Angliæ* ad Cuſtodiendum." That is, only to the Judges that violate their Oaths, having the Laws of *England* entruſted unto them.

This Judgment was given 24 *Ed.* III. The next Year, in the Parliament 25 *Edw.* III. Numero 10. it was debated in Parliament whether this Judgment was Legal, and *Nullo Contradicente*, unanimouſly it was declared to be juſt, and according to the Law, and that the ſame Judgment may be given in Time to come upon the like Occaſion. *Cotton.* Abr. 74, 316. Lord *Mac.* Trial 17. a.

In a Parliament held in the 11th Year of *Richard* II. there was Judgment of High Treaſon given againſt 18 ſeveral Perſons, and all, ſave one of them, of Eminent Rank; Three Privy Counſellors, viz. The Archbiſhop of *York*, the Duke of *Ireland*, and Earl of *Suffolk*, the Biſhop of *Exeter*, the King's Confeſſor, Five Knights, of whom ſome had been Servants to *Edw.* III. and all, but One, Servants to the then King, and ſome of them of Noble Deſcent; but that which I more particularly obſerve, there were amongſt them *Six Judges*, and *Locton*, the King's **Serjeant at Law**, *Blake*, of the King's Council at Law, and *Uſk*, the *Under-Sheriff* of *Middleſex*.

Of theſe 18, 8 were executed; that is, Sir *Robert Treſilian*, the Lord Chief Juſtice, was drawn from the *Tower* thro' the midſt of *London* to *Tyburn*, and there hanged; ſo likewiſe were *Uſk* and *Blake*, and Sir *John Salisbury*; but the other 4 Knights had the Favour to be Beheaded.

Three, that is, the *Archbiſhop of York*, the *Duke of Ireland*, and the *Earl of Suffolk*, died miſerable Fugitives in foreign Parts.

The other *Seven* (whereof *five were Judges*) with much ado got a Pardon, as to Life; but were baniſhed, and their Lands and Goods all forfeited, and it was made *Felony* for any to procure their Recalling home, and themſelves forthwith to be executed as Traitors, if at any Time they ſhould preſume to return.

And of theſe *Eighteen* Perſons, all ſave *three* were *impeached by the Commons*.

A few other Caſes, which I ſhall think proper to add under this Note, are, I. Sir *Richard Empſon*, Knt. and *Edmund Dudley* [53], both Lawyers, *Barons of the Exchequer*, and *Juſtices of the Peace thro'out England*. Their Character as given by the Hiſtorian is, that they turn'd Law into Rapine, and for their extorſive Practices they were executed in King *Hen.* VIII. Days. II. The *Earl of Middleſex*, having delayed Juſtice to the Farmers of the Cuſtoms, in a Matter referred to him by King *James* I. and having polluted his Hands with exorbitant Bribes, was *Sentenced in Parliament* to loſe all his Offices which He held in the Kingdom; to be for ever uncapable of any Office, Place or Employment in the State; to be impriſoned in the *Tower* of *London* during the King's Pleaſure; to be fined 50,000 *l*, never to ſit in Parliament any more, nor to come within the Verge of the King's Court. The Caſe of my *Lord Bacon* * is another Inſtance of the Virtue and Integrity of Our Anceſtors in the Abhorrence they ſhewed, and the Puniſhment they inflicted on that Great Man's Crimes [54]. . . . . Error in Parliament ſhall be reverſed in Parliament, & *non aliter*; for there is not an higher Court. 1 H. 7. fo. 19, 20. By all the Judges in the Exchequer-Chamber, for a Judgment in the King's Bench, Error muſt be ſued in Parliament; and as the Parliament ſhall correct the Judgments, ſo they are to correct the *Judges*, that give corrupt and diſhoneſt Judgments. Theſe are the Words and the Opinion of the Lord Chief Juſtice *Vaughan* in *Buſhel*'s Caſe [55]. Such, ſays He, in all Ages have been complained of to the King in the Star-Chamber (which is a Court now diſſolved by Parliament) or to the Parliament. He there mentions many Judges; thoſe 44 that were hang'd in King *Alfred*'s Time, before the Conqueſt, for corrupt Judgments; and thoſe in the Time of E. 1. E. 3. and R. 2. for their pernicious Reſolutions: He vouches the Journals of Parliament, and Inſtances in the Judgment of Ship-Money in the laſt King's Time, and the particular Judges impeached. Other Caſes are *Sir Robert* † *Berkley* [56], that of the *Lord Chief Juſtice Keeling* about the Year 1666 [57]. *Lord Chief Juſtice Scroggs* [58], againſt whom Articles of Impeachment were drawn up, read in the Houſe of Commons, and Ingroſſed, and on the 17th *Jan.* 1680. ſent up to the Houſe of Lords, and He was removed from his High Office about the 11th of *April* 1681. meerly to ſtop their Mouths, and ſo obtain quietneſs. The Caſe and Exit of the *Lord Chan-*

4 *cellor*

---

[53] *Baker*, Chron. fo. 247. 2 *Inſt.* 51.
[54] Lord *Mac.* Trial 17. a.
[55] Rep. fol. 139.
[56] *Ruſhw.* III. 606.
[57] Triumphs of Juſtice.
[58] *Burnet*, Hiſt. own Times 448, 468. *Eachard*, III. 562, 573, 594, 604, 628. *Wood*'s Athenæ, II. 748. *Rapin*, XIV. 279.

* Coll. to his Life 141. *Whitl.* H. 300, 309.
† *Rapin*, XII. 185. *Whitl.* M. 39, 69.

" Thus is the Man bleſſed that feareth the (o) Lord." And I think it no leſs a peculiar Bleſſing, that from amongſt the Judges and their (p) Off-ſpring, more Peers and Great Men of the Realm have riſen, than from any other Profeſſion or Eſtate of Men whatſoever who have rendred themſelves them Wealthy, Illuſtrious and Noble by their own Application, Parts and Induſtry. Altho' the Merchants are more in Number by ſome Thouſands; and ſome of them excel in Riches all the * Judges put together. This can never be aſcribed to mere Chance or Fortune, which is nothing; but ought to be reſolved (I think) into the peculiar Bleſſing of Almighty GOD, who, by his (q) Prophet, hath declared, that " the Generation of the Upright ſhall be bleſſed." And elſewhere the Prophet, ſpeaking of the Righteous, ſays, " Their Children ſhall be bleſſed." Wherefore, *My Prince*, be a Lover of Juſtice, which maketh Rich and Honourable; which perpetuates the Generation of Thoſe who love her: In order to this, be a Zealous Lover of the *Law*, which is the *Parent of Juſtice*, that it may be ſaid, and verified of You, which is written of the Righteous, " Their Seed ſhall endure for ever." [*Pſ.* LXXXIX. 36. and ver. 4. & 29. *Eccl*us. XXVII. 8. * *Whitl.* M. 275.

cellor Jefferey are very well known. By the *Law* of the XII *Tables*, it was Capital for a *Judge*, or an *Arbitrator*, to receive any Fee or Reward as ſuch [59]. v. *Exod.* XVIII. 21. *Patr.* ad Loc. *Rapin*, II. 23. N. — V. 91. *Sheringh.* 237. *Wilk.* 77. N. d. 221, 247. *Walſingh.* p. 54. Ad an. 1290. *Stowe*, An. 204. *Seld.* Pref. ad *Hengham* in ipſo initio. *Seld.* III. 1911. *Vaughan*'s Rep. 138, 9. v. 4 *Inſt.* 255. *Oldmixon* 653. *Whitl.* M. ſub ann. 1640, 1643. *Oldm.* 133, 164, 244.

(o) *Pſ.* CXXVIII. 4.

(p) This is a Truth ſeconded by Sir *Edward Coke*, that there is no Learning ſo Excellent for the Prince and Subject, for all Eſtates, and in all Caſes, as, Reſpect being had to Our own Conſtitution, the Knowledge of the **Common Laws** of *England*. If the Ancient Laws of this Iſland had not excelled all others, it could not be but that ſome [60] of the ſeveral Conquerors, eſpecially the *Romans*, who boaſt of their *Civil Laws*, would have changed the ſame. The Profeſſors of Our Law, under GOD, have obtained a greater Bleſſing and Ornament to their Families and Poſterity than any other Profeſſion. *Pref.* to his ſecond *Report*, and the Side next after; where He gives an Alphabetical Liſt of near Two Hundred Great and Noble Families which have riſen by the Law, and amongſt them Our Chancellors. *Dugd.* Pref. 1. b. Sir *Robert Atkins* of the Power of Parliaments, p. 18.

(q) *Pſ.* CXII. 2. *ib.* CXLVII. 13.

[59] T. IX. L. 3. *Catrou & Rouille Ro.* Hiſt. *Seld.* II. 1116.

[60] Ante Cap. XVII.

CHAP. LII.

An Objection with Reſpect to the Delays in Law-Proceedings.

Prince.] THERE remains but One Thing, *My Chancellor*, to be cleared up, which makes me heſitate, and gives me diſguſt; if You can ſatisfy my Doubts in this Particular, I will ceaſe to importune You with any more Queries. It is objected, that the *Laws of England* admit of great (a) Delays in the

(a) Delay of Juſtice is a kind of Denial of Juſtice, therefore the Laws are ſaid *pati*, not *inferre dilationes*; for the Good of Men in the clearing Juſtice, the *Civil Laws* allow Delay: It would

the Courſe of their Proceedings, beyond what the Laws of any other Country allow of: This is not only an Obſtruction to Juſtice, but often an Inſupportable Expence to the Parties who are at Law; eſpecially in ſuch Actions where the (b) *Demandant* is not entitled to his Damages.

would otherwiſe, in ſome Caſes, be impoſſible to make out Truth, where the Act of GOD, or ſome other Incident intervenes, if Time were not indulged to uſe Helps to remove a Difficulty, or ſome Way equivalent to that, which, by reaſon of Demurs, is not obtainable. Tho' there may be and are ſeveral Excuſes, or good and reaſonable Grounds allowed; yet the Law does not eaſily favour unneceſſary Delays, but is purely inclined to ſuch a Latitude as may protect both the Laws and Men, according to that Rule of *Bartolus*, " Non eſt in morâ Qui poteſt exceptione Legitima " ſe tueri." *Digeſt.* L. 2. Tit. 14. de Pactis, p. 307. W.

(b) **Demandant**, *Petens*, is the *Plaintiff*, in a real Action ſo called, becauſe he demandeth Lands [1]. At **Common Law** no Damages were recovered in any real Action [2]. Otherwiſe in mixt Actions; as in **Aſſiſe**, **Entry** in Nature of an **Aſſiſe**, &c [3]. So in perſonal Actions, as **Treſpaſs**, *quare clauſum fregit*, &c [4]. Damages ſhall be recovered in a **Writ** of *Admeaſurement of* **Dower** [5]. But not in a **Writ** of *Admeaſurement of Paſture* [6]; Otherwiſe in a **Writ** *de ſecunda ſuperoneratione* by the **Stat.** *Weſtm.* 2. cap. 8. which vid. 2 *Inſt.* 369.

[1] *Cowell*, Int. 1 *Inſt.* 127. [2] 2 *Danv.* 457. pl. 33, &c. 10 *Co.* 116. a. [3] Ib. [4] Ib. [5] 2 *Inſt.* 368. [6] Ib.

CHAP. LIII.

The Chancellor's Anſwer.

Chancellor.] IN Perſonal Actions, which do not ariſe (a) within the Cities and Trading Towns (where they proceed according to Uſages and Liberties of their own) the Proceedings are in the ordinary Way. Tho' they admit of great Delays, yet they are not ſo Exceſſive. Indeed (b) in Cities and Towns, eſpecially when the Neceſſity of the Caſe ſo requires, the Proceſs is ſpeedy, as it is likewiſe in other Parts of the World. But neither yet are the Proceedings hurried on too faſt (as it ſometimes happens in other Countries) by Means whereof one or other of the Parties is a Sufferer. *In real Actions*, almoſt every

4 where,

(a) *Extra Urbes*] i. e. Such as are Counties, and *Staples* of Trade, within themſelves, and have private local Laws indulged to them, diſtinct from the General Laws of open Places, where *Proceſſus ſunt Ordinarij*, that is, all Matters of Juſtice between Man and Man, all Matters which concern the Peace are tried in the *Hundred*, *County-Court*, *Leet*, or at the *Aſſiſes*. Tho' this Proceeding cannot avoid ſome Delay, yet, ſo as it be in any Degree, is very tolerable and uſeful. By the **Stat.** *Edw.* I [1]. No **Eſſoine** lies for the *Appellor* in *Appeal* of the Death of a Man [2]. By another **Stat.** [3] no **Eſſoine** lies *de malo lecti*, if the Demandant except, that the Tenant is Sick, nor in ſuch plight but that he may come before the Juſtices [4]. There is no **Eſſoine** after a Day given *prece Partium*. In that the **Stat.** of **Eſſoines** allows *Challenges* of **Eſſoines** in certain Caſes, it clearly appears that **Eſſoines**, as *Delays*, in Obſtruction of Juſtice, the Law allows not. There are many Sorts of *Protections*, but they are rarely uſed, being often ouſted by *Act of Parliament* in Perſonal Actions. But ſee the 12 & 13 W. 3. Chap. 3. of *Privilege of Parliament*. *Wood. Inſt.* C. L. 571. F. N. B. 28, 9. 1 *Inſt.* 130, 131. a. b. v. *Cowell. Spelm.* & *Du Freſne* ad v. *Sunnis*.

(b) *In Urbibus*] Becauſe of *Men of Trade*, Strangers as well as others inhabiting in Towns and Cities, and whoſe Affairs will not permit their long Stay, therefore the *Law of England* allows them a ſpeedy Remedy againſt Wrong-doers; for this Reaſon the **Stat.** of *Acton Burnel*, 13 E. I. (*Keb.* 35.) 9 E. III. 1. and other Statutes were enacted.

[1] 13 E. 1. c. 12. (*Keb.* 42.) [2] 2 *Inſt.* 383. — 387. [3] 13 *Ed.* 1. c. 17. (*Keb.* 43.) [4] 2 *Inſt.* 393.

where, the Proceſs goes on (c) ſlow and tedious; but in *England* it is more expeditious. There are in *France*, in the Supreme Court of Parliament, ſome Cauſes, which have been depending upwards of Thirty Years. I my ſelf know a Caſe of Appeal proſecuted in the ſaid Court, which has been depending now theſe Ten Years, and it is likely will be ſo for Ten Years more before it can be decided. While lately at *Paris*, my Hoſt ſhewed me his Proceſs in Writing, which had been before the Court of Parliament for Eight Years, for (d) *four French Sols* Rent, which, of Our Money, makes but *Eight Pence*, and he had no Proſpect of obtaining Judgment in leſs than Eight Years more. I have known other Caſes of the ſame Nature: And for what appears to me, the Laws of *England* do not admit of ſo great Delays as the Laws of *France*. But it is really (e) neceſſary there ſhould be Delays in Legal Proceedings, provided they be not too dilatory and tedious. By theſe Means the Parties, in particular the Party proſecuted, is better provided with his proper Defence, and Advice of Counſel, which otherwiſe neither of them could be, either to proſecute or defend. " Judgment is never ſo ſafe when the Proceſs

(c) *Moroſi ſunt Proceſſus*] *Tully* [5] couples *Difficiles* ac *moroſi* together, " tantum abeſt, ut noſtra " miremur, ut uſque eo difficiles, ac moroſi ſimus, ut nobis non ſatisfaciat ipſe *Demoſthenes*." Speedy Execution of Juſtice is the Glory of *England*; no Delays can be in Trials, if there be not Neglect in the Proſecution, or Combination in the Adverſaries, to ſpin out Suits *in infinitum*: As in all Caſes, ſo in this, He who values not his own Quiet has it in his Power to diſturb another Man's. Tho' no Laws can well hinder this, yet the Laws of *England* do as much to diſcourage and puniſh it as poſſible, as in Caſes of *Conſpiracy*, *Perjury*, *Forging of Deeds*, *Barretry*, *Champerty*, &c. By the Stat. *Ed.* III [6]. the Court for Redreſs of Delays of Judgment in the King's great Courts was erected [7]. The Inhibition and Puniſhment of unneceſſary unjuſt Delay was, before that *Statute*, by the **Common Law**, which required, that *plena & celeris Juſtitia fiat omnibus*: So in the **Writ**, *Præcipe quod reddat*, it is *quod juſtè & ſine dilatione reddat*. So in the **Writ** *de Executione Judicii*, &c. all which do, *pleno ore*, confirm, that the Laws do abhor Delay, as it is an Obſtruction to Juſtice. By *Stat.* E. III [8]. it is accorded and eſtabliſhed that it ſhall not be commanded by the Great Seal to diſturb or delay common Right: And tho' ſuch Commandments do come, the Juſtices ſhall not therefore leave to do Right in any Point [9]. By the *Stat.* E. I. [10], if the Defendant **eſſoine** himſelf of the King's Service, and do not bring his Warrant at the Day given him by the **Eſſoine**, He ſhall recompence the Plaintiff Damages for his Journey *Twenty Shillings*, or more, after the Diſcretion of the Juſtices, and ſhall be grievouſly amerced unto the King [11]. That the Equity and Impartiality of the Juſtice of the Law may appear, Delays are uſeful and good as they ſtead all Parties: Cauſes and Perſons are not ſurprized, they have all convenient Latitude to free themſelves. W. 4 *Inſt.* 67. — 69. v. 2 *Inſt.* 240, 411, 588.

(d) *Blanks*, or *Whites*, were a Sort of Money coined by *Hen.* V. in *France*, after his Victory at *Agincourt*. Sir *Ed. Coke* [12] ſays they were valued but at VIII d. and becauſe of their Baſeneſs were decry'd. By VIII d. I ſuppoſe He means $\frac{2}{3}$ of *Hen.* V. Groats; which was his higheſt Coin in Silver, and for which they ſeem to have been firſt deſigned. But We are otherwiſe to underſtand *Chancellor Forteſcue*, who affirms, that about the latter End of *Hen* VI. Reign, *four French Sols* were valued at about VIII d. *Engliſh* [13]. After the Year 1351, We meet with the Name **Groats** often, and moſt commonly applied to IV d. tho' (as I think) ſometimes to more than IV d. *Chron. Pretioſum* 48. *Somner.* v. *Groſſa.*

(e) In Matters of great Difficulty, which come before the Judges in the Courts of *Weſtminſter*: Or if there be no great Difficulty, yet if it be of mighty Concernment, and not clearly concurring with the Intent and Words of Law-Makers, but the Law in the Scope of it is like to be fruſtrated by an haſty Determination, it is, under Favour, the Duty of the Judges in ſuch Caſes *Dubitationes Judicior'* to reſt till the Parliament meet, and then to propoſe it to the Parliament for their Reſolution. Thus it is expreſsly provided in the *Statute of Treaſon* [14], to defer doubtful Caſes till the Parliament reſolve them, being in a Matter of ſo high Concernment as that of Treaſon. *Atkins* of the Diſpenſing Power, p. 26.

---

[5] *Orator.* ad M. *Brutum* XXIX. [6] 14 *Ed.* 3. c. 5. [7] V. 4 *Inſt.* cap. VI. [8] 2 *Ed.* 3. c. 8. [9] V. *Statt.* 9 H. 3. c. 29. 5 *Ed.* 3. c. 9. 14 *Ed.* 3. c. 14. 11 *R.* 2. c. 10. (*Keb.* 91.) [10] 6 *Ed.* 1. c. 8. (8.) [11] V. F. N. B. Fo. 17. H. *Raſt.* pla. Fo. 297. v. 43 *El.* c. 6. 21 *Jac.* 16. (*Keb.* V. 2, 31.) [12] 3 *Inſt.* 92. [13] *Nicholſon*, III. 290. [14] 25 *Ed.* 3. c. 2.

the Courſe of their Proceedings, beyond what the Laws of any other Country allow of: This is not only an Obſtruction to Juſtice, but often an Inſupportable Expence to the Parties who are at Law; eſpecially in ſuch Actions where the (b) *Demandant* is not entitled to his Damages.

would otherwiſe, in ſome Caſes, be impoſſible to make out Truth, where the Act of GOD, or ſome other Incident intervenes, if Time were not indulged to uſe Helps to remove a Difficulty, or ſome Way equivalent to that, which, by reaſon of Demurs, is not obtainable. Tho' there may be and are ſeveral Excuſes, or good and reaſonable Grounds allowed; yet the Law does not eaſily favour unneceſſary Delays, but is purely inclined to ſuch a Latitude as may protect both the Laws and Men, according to that Rule of *Bartolus*, " Non eſt in morâ Qui poteſt exceptione Legitima " ſe tueri." *Digeſt.* L. 2. Tit. 14. de Pactis, p. 307. W.

(b) **Demandant**, *Petens*, is the *Plaintiff*, in a real Action ſo called, becauſe he demandeth Lands [1]. At **Common Law** no Damages were recovered in any real Action [2]. Otherwiſe in mixt Actions; as in **Aſſiſe**, **Entry** in Nature of an **Aſſiſe**, &c [3]. So in perſonal Actions, as **Treſpaſs**, *quare clauſum fregit*, &c [4]. Damages ſhall be recovered in a **Writ** of *Admeaſurement of* **Dower** [5]. But not in a **Writ** of *Admeaſurement of Paſture* [6]; Otherwiſe in a **Writ** *de ſecunda ſuperoneratione* by the **Stat.** *Weſtm.* 2. cap. 8. which vid. 2 *Inſt.* 369.

[1] *Cowell*, Int. 1 *Inſt.* 127. [2] 2 *Danv.* 457. pl. 33, &c. 10 *Co.* 116. a. [3] Ib. [4] Ib. [5] 2 *Inſt.* 368. [6] Ib.

CHAP. LIII.

The Chancellor's Anſwer.

Chancellor.] IN Perſonal Actions, which do not ariſe (a) within the Cities and Trading Towns (where they proceed according to Uſages and Liberties of their own) the Proceedings are in the ordinary Way. Tho' they admit of great Delays, yet they are not ſo Exceſſive. Indeed (b) in Cities and Towns, eſpecially when the Neceſſity of the Caſe ſo requires, the Proceſs is ſpeedy, as it is likewiſe in other Parts of the World. But neither yet are the Proceedings hurried on too faſt (as it ſometimes happens in other Countries) by Means whereof one or other of the Parties is a Sufferer. *In real Actions*, almoſt every

4 where,

(a) *Extra Urbes*] i. e. Such as are Counties, and *Staples* of Trade, within themſelves, and have private local Laws indulged to them, diſtinct from the General Laws of open Places, where *Proceſſus ſunt Ordinarij*, that is, all Matters of Juſtice between Man and Man, all Matters which concern the Peace are tried in the *Hundred*, *County-Court*, *Leet*, or at the *Aſſiſes*. Tho' this Proceeding cannot avoid ſome Delay, yet, ſo as it be in any Degree, is very tolerable and uſeful. By the **Stat.** *Edw.* I [1]. No **Eſſoine** lies for the *Appellor* in *Appeal* of the Death of a Man [2]. By another **Stat.** [3] no **Eſſoine** lies *de malo lecti*, if the Demandant except, that the Tenant is Sick, nor in ſuch plight but that he may come before the Juſtices [4]. There is no **Eſſoine** after a Day given *prece Partium*. In that the **Stat.** of **Eſſoines** allows *Challenges* of **Eſſoines** in certain Caſes, it clearly appears that **Eſſoines**, as *Delays*, in Obſtruction of Juſtice, the Law allows not. There are many Sorts of *Protections*, but they are rarely uſed, being often ouſted by *Act of Parliament* in Perſonal Actions. But ſee the 12 & 13 W. 3. Chap. 3. of *Privilege of Parliament*. *Wood. Inſt.* C. L. 571. F. N. B. 28, 9. 1 *Inſt.* 130, 131. a. b. v. *Cowell. Spelm.* & *Du Freſne* ad v. *Sunnis*.

(b) *In Urbibus*] Becauſe of *Men of Trade*, Strangers as well as others inhabiting in Towns and Cities, and whoſe Affairs will not permit their long Stay, therefore the *Law of England* allows them a ſpeedy Remedy againſt Wrong-doers; for this Reaſon the **Stat.** of *Acton Burnel*, 13 E. I. (*Keb.* 35.) 9 E. III. 1. and other Statutes were enacted.

[1] 13 E. 1. c. 12. (*Keb.* 42.) [2] 2 *Inſt.* 383. — 387. [3] 13 *Ed.* 1. c. 17. (*Keb.* 43.) [4] 2 *Inſt.* 393.

where, the Proceſs goes on (c) ſlow and tedious; but in *England* it is more expeditious. There are in *France*, in the Supreme Court of Parliament, ſome Cauſes, which have been depending upwards of Thirty Years. I my ſelf know a Caſe of Appeal proſecuted in the ſaid Court, which has been depending now theſe Ten Years, and it is likely will be ſo for Ten Years more before it can be decided. While lately at *Paris*, my Hoſt ſhewed me his Proceſs in Writing, which had been before the Court of Parliament for Eight Years, for (d) *four French Sols* Rent, which, of Our Money, makes but *Eight Pence*, and he had no Proſpect of obtaining Judgment in leſs than Eight Years more. I have known other Caſes of the ſame Nature: And for what appears to me, the Laws of *England* do not admit of ſo great Delays as the Laws of *France*. But it is really (e) neceſſary there ſhould be Delays in Legal Proceedings, provided they be not too dilatory and tedious. By theſe Means the Parties, in particular the Party proſecuted, is better provided with his proper Defence, and Advice of Counſel, which otherwiſe neither of them could be, either to proſecute or defend. "Judgment is never ſo ſafe when the Proceſs

(c) *Moroſi ſunt Proceſſus*] *Tully* [5] couples *Difficiles* ac *moroſi* together, "tantum abeſt, ut noſtra "miremur, ut uſque eo difficiles, ac moroſi ſimus, ut nobis non ſatisfaciat ipſe *Demoſthenes*." Speedy Execution of Juſtice is the Glory of *England*; no Delays can be in Trials, if there be not Neglect in the Proſecution, or Combination in the Adverſaries, to ſpin out Suits *in infinitum*: As in all Caſes, ſo in this, He who values not his own Quiet has it in his Power to diſturb another Man's. Tho' no Laws can well hinder this, yet the Laws of *England* do as much to diſcourage and puniſh it as poſſible, as in Caſes of *Conſpiracy*, *Perjury*, *Forging of Deeds*, *Barretry*, *Champerty*, &c. By the Stat. *Ed.* III [6]. the Court for Redreſs of Delays of Judgment in the King's great Courts was erected [7]. The Inhibition and Puniſhment of unneceſſary unjuſt Delay was, before that *Statute*, by the **Common Law**, which required, that *plena & celeris Juſtitia fiat omnibus:* So in the **Writ**, *Præcipe quod reddat*, it is *quod juſtè & ſine dilatione reddat.* So in the **Writ** *de Executione Judicii*, &c. all which do, *pleno ore*, confirm, that the Laws do abhor Delay, as it is an Obſtruction to Juſtice. By *Stat.* E. III [8]. it is accorded and eſtabliſhed that it ſhall not be commanded by the Great Seal to diſturb or delay common Right: And tho' ſuch Commandments do come, the Juſtices ſhall not therefore leave to do Right in any Point [9]. By the *Stat.* E. I. [10], if the Defendant **eſſoine** himſelf of the King's Service, and do not bring his Warrant at the Day given him by the **Eſſoine**, He ſhall recompence the Plaintiff Damages for his Journey *Twenty Shillings*, or more, after the Diſcretion of the Juſtices, and ſhall be grievouſly amerced unto the King [11]. That the Equity and Impartiality of the Juſtice of the Law may appear, Delays are uſeful and good as they ſtead all Parties: Cauſes and Perſons are not ſurprized, they have all convenient Latitude to free themſelves. W. 4 *Inſt.* 67. — 69. v. 2 *Inſt.* 240, 411, 588.

(d) *Blanks*, or *Whites*, were a Sort of Money coined by *Hen.* V. in *France*, after his Victory at *Agincourt*. Sir *Ed. Coke* [12] ſays they were valued but at VIII d. and becauſe of their Baſeneſs were decry'd. By VIII d. I ſuppoſe He means $\frac{2}{3}$ of *Hen.* V. Groats; which was his higheſt Coin in Silver, and for which they ſeem to have been firſt deſigned. But We are otherwiſe to underſtand *Chancellor Forteſcue*, who affirms, that about the latter End of *Hen* VI. Reign, *four French Sols* were valued at about VIII d. *Engliſh* [13]. After the Year 1351, We meet with the Name **Groats** often, and moſt commonly applied to IV d. tho' (as I think) ſometimes to more than IV d. *Chron. Pretioſum* 48. *Somner.* v. *Groſſa.*

(e) In Matters of great Difficulty, which come before the Judges in the Courts of *Weſtminſter:* Or if there be no great Difficulty, yet if it be of mighty Concernment, and not clearly concurring with the Intent and Words of Law-Makers, but the Law in the Scope of it is like to be fruſtrated by an haſty Determination, it is, under Favour, the Duty of the Judges in ſuch Caſes *Dubitationes Judicior'* to reſt till the Parliament meet, and then to propoſe it to the Parliament for their Reſolution. Thus it is expreſsly provided in the *Statute of Treaſon* [14], to defer doubtful Caſes till the Parliament reſolve them, being in a Matter of ſo high Concernment as that of Treaſon. *Atkins* of the Diſpenſing Power, p. 26.

---

[5] *Orator.* ad M. *Brutum* XXIX. [6] 14 *Ed.* 3. c. 5. [7] V. 4 *Inſt.* cap. VI. [8] 2 *Ed.* 3. c. 8. [9] V. *Statt.* 9 H. 3. c. 29. 5 *Ed.* 3. c. 9. 14 *Ed.* 3. c. 14. 11 *R.* 2. c. 10. (*Keb.* 91.) [10] 6 *Ed.* 1. c. 8. (8) [11] V. F. N. B. Fo. 17. H. *Raſt.* pla. Fo. 297. v. 43 *El.* c. 6. 21 *Jac.* 16. (*Keb.* V. 2, 31.) [12] 3 *Inſt.* 92. [13] *Nicholſon*, III. 290. [14] 25 *Ed.* 3. c. 2.

" is hurried on." I remember once at an (f) Aſſiſes and Gaol-Delivery at *Salisbury*, that I ſaw a Woman indicted for the Death of her Husband, within the Year: She was found Guilty, and burnt for the ſame: In this Caſe the Judge of Aſſiſe, after the whole (g) Proceedings before him were over, might have (h) reſpited the Execution of the Woman, even after the Expiration of the Year. At a ſubſequent Aſſiſes I ſaw a Servant of the Man who was ſo killed, tried and convicted before the ſame Judge for the ſame Murder: Who made an ample Public Confeſſion that He was the only Perſon who was Guilty of the ſaid Fact, and that his Miſtreſs, who had been executed, was entirely innocent of it: Wherefore he was drawn and hanged, and at the Time and Place of his Execution he lamented the Caſe of his poor Miſtreſs, upon Account of her Innocence, and her being in no wiſe privy to her Husband's Death. The Fact being thus, how may We ſuppoſe the Judge to be affected with a Senſe of Conſcience and Remorſe for being ſo haſty in awarding Judgment of Execution, when it was in his Power to have ſtayed, for ſome Time, further Proceſs againſt her: He often owned to me, with Concern, that He ſhould never be able to ſatisfy it to his Conſcience for ſuch his precipitate Behaviour. Deliberation often brings Judgment to Maturity, which ſeldom or never happens where the Proceedings are too much hurried on. Wherefore the Laws of *England* admit of (i) **Eſſoins**, a Sort of Practice not known in the Laws of other

(f) There is a remarkable Caſe in the Lord *Coke* [15], which the Author reports by Way of Caveat to the Judges, that they in Caſe of Life judge not too haſtily upon bare Preſumptions: " Nihil minus in perfecto Duce, quam feſtinationem temeritatemque convenire arbitrabatur. (*Octavius* ſc [16].) The ſame Rule may be applied to Judges, " Feſtinatio improvida eſt & " cæca [17]. Temeritatem, præterquam quod Stulta ſit, infelicem etiam ad id locorum fuiſſe." *Liv.* XXI. 38. Pref. 8 *Co.* 6. a. v. Sir *W. Raleigh*, L. 2. c. 4. §. 16. p. 247.

(g) *Arretamentum*] V. Cap. XXVII. N. a. *Addretiare*] 1410, 37. 1411, 44, 5. & alicubi: Ad rectum faciendum & *addretiandum* ei & hominibus ſuis quod *addretiare* debuerunt. Vox miniſtrare vel exhibere ſignat; à *Gall.* addreſſer, al. adreſſer, i. e. dirigere. *Somner.* ib ad v. *Arreniatus.* Fort. 126. N. d. *Diſrationem*] Deraigne, Dereyne, Diſrationare, Dirationare, ſignifies generally to prove [18] " Habeo ſufficientem *diſraciocinationem* & probationem [19]. To *Dereyne* the Warranty [20]. To *Dereyne* that Right [21]. *Skene* [22], in one Signification, confounds it with Our Waging and Making of Law, which is not much other than the Scotch Term (*Exculpation*) Lex Deraiſnia, rectius, Deraiſina, is the Proof of a Thing which one denies to be done by him, and his Adverſary affirms it; defeating and confounding the Aſſertion of his Adverſary, and ſhewing it to be without and againſt Reaſon or Probability. " Juris Membrum eſt *Norman-* " *nici*, quod in priſco ejuſdem Cuſtumario [23] ſic definitur — *Deraiſina* eſt Lex quædam in *Nor-* " *mannia* conſtituta, per quam in Simplicibus querelis, inſecutus, Factum quod a Parte adverſa " ei objicitur ſe non feciſſe declarat." *Dirationavit* plures terras, recovered by pleading many Lands [24]. V. *Somner* ad v. *Diſraciocinium.* Fort. 128. v. *Spelm.* Lex deraiſina; v. Cap. XXI. N. (8.)

(h) *Reſpectare*] Prorogare, prolongare, ampliare, differre. Ita *Reſpectuari*, paſſivè. *Reſpectus*, *Reſpectatio*, i. e. dilatio, prolongatio, induciæ, ampliatio, vulgò *Gall.* & *Angl.* Reſpit. Saxonibus ꝼyꝑrt unde furſt [25] in LL. Hen. I. 46. . . . . id fortaſſe quod nunc dierum facultatem reo conceſſam billam Indictamenti traverſandi, nuncupant *Forenſes* noſtri, veteres autem, *diſratiocinandi* copiam; de quo v. eaſdem LL. cap. 5. 48, 9. & *Spelm.* in v. diſrationare. *Somner.* v. Reſpectare.

(i) **Eſſoins** at Common Law are five: Sir *Edward Coke* [26] tells us that **Eſſoins** were inſtituted upon juſt and neceſſary Cauſes: And becauſe they ſhould not be uſed in feigned Cauſes of Delay, He who caſts the **Eſſoine** ought to be ſworn that the Cauſe thereof was juſt and true [27]. " Si

[15] 3 *Inſt.* 232. v. [16] *Sueton.* in *Octavio*, c. 25. [17] *Liv.* XXI. 39. [18] *Glanvil*, l. 2. c.c. 6. & 20. [19] *Bract.* l. 4. Tr. 6. c. 16. — ib. c. 22. [20] *Old N. B.* Fo. 146. [21] 3 *Ed.* 1. c. 4. *Weſtm.* 2. c. 5. [22] De verb. ſignif. ad v. *Diſrationare.* [23] C. 126 [24] *Tyrrel*, II. Int. LXVIII, IX. [25] *Wilk.* Gl. [26] On the Stat. *Marlbridge*, c. XIX. [27] 2 *Inſt.* 137. *Hengham Parva*, c. 8. p. 85. *Fleta*, L. 6. c. 6. & ſeqq.

other Countries. Are not the (k) **Vouchings to Warranty** of ſome Uſe? The ſame may be ſaid of the **Aids** of thoſe to whom the Reverſion of Lands belongs, who bring the Title in Queſtion, and who have in their Cuſtody the Evidences to make out the Title of the Lands. The ſame may be ſaid of *Coparcenors*, who are to reſtore in Proportion, if the Eſtate allotted to one of them ſhould be evicted: And yet theſe are all Delays, as I have formerly informed You: Even Delays of this Kind the Laws of other Countries do not allow: Neither do the Laws of *England* favour ſuch Delays and (l) Emparlances as are frivolous and vexatious: And if, at any Time, Delays happen in Pleading, which are found to be miſchievous and inconvenient, they may be aboliſhed, or reformed, in every Parliament: Nay, and all other Laws uſed in *England*, where they do not anſwer the Intention, or labour under any Defect, may be corrected and amended in Parliament. So that all the Laws of *England*, You will conclude from what has been ſaid, muſt needs be very good, either in Fact or Poſſibility. They are either ſuch already, or are eaſily capable of being made ſuch. And to this the Kings of *England* are obliged in Virtue of a Solemn Oath taken at their Coronation, as often as the Neceſſity or Equity of the Caſe ſhall ſo require.

" ad quartum diem poſt tria *eſſonia* venerit, & omnia *eſſonia* warrantizaverit, Probabit quodlibet " *Eſſonium* jurejurando propria & unica manu, & ſic de placito eodem die reſpondebit [28]. Jure- " jurando liberatus eſt *eſſoniatus* Statuto *Marlbr.* cap. 19. ib. in Marg. *Spelm.* p. 241. W. *Somner. Wilk.* 260. *Bract.* Fo. 351, 2.

" *Exonium*, Exonia, Sonnis, Sunnis, Sunnia, Sonius, Sonias in Ll. *Germanorum* & *Wiſigothorum*, " nunc impedimentum, nunc Excuſatio, *Latinè* transferuntur, quum quis in jus vocatus, per alium " mittit, cauſam oſtendens quâ impeditus ad Curiam non poterat venire. De *Eſſoniorum* variis gene- " ribus v. *Glanvil* [29]. Sunnia, Sunnis, &c. deducuntur à veteri *Mæſo-Gothico*, Sunia, Veritas, vel " Suniens, *Cimbricè*, Sunnur, Verus. Nempe quod impedimentum quo quis ad Curiam Summonitus ſe *eſſoniari* vel excuſari in Foro curabat, verificari vel verum eſſe probari non tantum *eſſoniatoris* ſeu illius Qui vice ejus reſpondebat, ſed ſui ipſius & Conſacramentalis aliquando juramento, cum tandem ad Curiam veniret, probandum erat. Hinc *Latino*-barbarum *eſſoniare* quàm aptiſſime reſpondet *Mæſo-Gothico* verbo, **Sunian**, *Cimbro-Gothico*, **at Sonna**, probare verum, verificare, jurejurando confirmare. *Sunnium* vel ESSONIUM, Cauſam veram, vel rationabilem juris-periti definiunt. Vetus Conſuetudo *Normanniæ* ait, *Exonie* eſſe ung delay qui monſtre cauſe pour quoy cil qui eſt ſemons ne vient a Court. *Hickes*, d. e. 8. m. *Wilk.* Gl.

(k) *Vocationes ad Warrantiam*] Of theſe *Glanvil* [30]. If I be bound to defend the Title of another, as the Tenant is, then He who has the Reverſion in Fee, or Ferm, muſt not only furniſh the Tenant with his Deeds, if He hath any: But with ſuch a Proportion of Money as is reaſonable to that End: If the Tenant's Term fails, the Expectancy of the Perſon in Reverſion muſt alſo fail: He *warrants*, and **Warranty** draws Supply and Recompence for all Damages. The like in the Caſe of *Coparceners:* When all have a joint Title, the Eviction of Part ſhall have Contribution from the reſt, after an equal Rate and Proportion; they are all of equal Title, and ought to be equal in Profit and Loſs. *Cujus eſt lucrum ejus debet eſſe damnum*; and è converſo [31]. " Hæc videtur in participibus, tenentibus conjunctim, & tenentibus in communi æque verum eſſe, " ut onus rei communis æqualiter ferant." Nam ſi unus vel plures eorum contribuere ad hoc recuſent, reliqui contra recuſantes actionem habent. *Cowel*, Inſt. 253.

(l) *Induciæ*] **Emparlance**, v. *Skinner*. Et. Voc. Forenſ. ad v.

[28] *Glanvil*, L. 1. c. 12. [29] L. 2. c. 6. & ſeqq. [30] L. 3. c. 1. — 3. Lit. l. 3. c. 13. §. 697, &c. [31] *Fleta*, L. 6. c. 4.

CHAP.

CHAP. LIV.

The Concluſion.

Prince.] I AM perfectly convinced from the whole Tenor of Your Diſcourſe, that the Laws of *England* are not only (a) Good, but the beſt of Laws for the particular Conſtitution of *England*. And if at any Time ſome of them want Amendment, it may be eaſily done by Application to and in the Way of Parliament: So that the Kingdom either really is, or is eaſily capable of being governed by the beſt of Laws: And I am of Opinion that the Points You have advanced in this Diſcourſe, and the juſt Encomium You have given Our Laws, may be of ſome Uſe to thoſe who ſhall be hereafter Kings of *England*: Since no King can govern with Pleaſure by ſuch Laws as He is not pleaſed with, or does not rightly apprehend. " The Unfitneſs of a Tool diſguſts " the Mechanic: And the Bluntneſs of the Lance or Spear makes " a daſtardly Soldier." But as a Soldier is animated to the Battle when his Arms are good, and Himſelf expert in uſing them, according to (b) *Vegetius*, who ſays, " That Knowledge and Ex- " perience in War breed and beget Courage: And no one is afraid " to do what He knows He can do well." So a King is animated and encouraged to do Juſtice, when the Laws, by which it is adminiſter'd, are Reaſonable and Juſt, and He has a ſufficient Knowledge of and Experience in them. A General Knowledge is ſufficient for Him, leaving it to his Judges to have a more exact and a more profound Skill in them. So (c) *Vincentius Beluacenſis*, in his Book of *Moral Inſtitution of Princes*, ſays, " that " every Prince ought to have a General Knowledge of the Holy " Scriptures", which ſay, " (d) That vain are all they in whom " there is not the Knowledge of GOD the moſt High:" And it is written in the (e) *Proverbs*, " Let Knowledge be in the Lips of " the

(a) This Conviction of the Prince is in Affirmance of what the *Chancellor* had laid down in the XV. Chapter, " Legem illam bonam eſſe & efficacem ad regni illius regimen:" To the ſame Purpoſe thro'out the XXVIII, XXX, XXXIII, XLV and XLVII Chapters. " The " Laws of *England* are every way fitted to the Government of *England*; ſo that in the Safety " and Preſervation of them, all honeſt Men do think the Welfare of their Country doth conſiſt. W.

(b) This of *Vegetius* [1] is probably quoted from *Aquinas*, de Regimine Principum [2]. To this Purpoſe the Old Teſtament [3] affords us a Figure not altogether improper. When *David* preſented himſelf to *Saul*, and offered his Service againſt *Goliah*, the Champion of the *Philiſtins*, *Saul*, to encourage him, accoutred him in his own Arms; but *David* having tried them on, excuſed himſelf, pretending they were unfit, and that with them he ſhould not be able to manage himſelf; Wherefore he deſired he might go forth againſt the Enemy with his own Arms only, which were his Sling and his Sword. The Sum of all is, the Arms of other People are commonly unfit, and either too wide, or too ſtrait, or too cumberſom. *Machiavel*'s *Prince*, c. 13.

(c) *Vincentius Beluacenſis*] V. *Fabric.* Bibl. Lat. I. 787. recenſetur in *Henrici Gandavenſis* Catalogo, c. 42. [4] *Vincentius Beluacenſis* (Bellovacenſis, Belvacenſis) Ord. Prædic. vixit an. 1240. obiit. c. an. 1256. ejus opera 4to Edita. *Du Freſne*'s Index; v. W. pp. 27, 591.

(d) Wiſd. *Sol.* XIII. 1.

(e) XVI. 10. The Words of this Text affirm the whole Political Order, Magiſtrates, Laws, Diſtinction of Dominions, Contracts, Judgments, Puniſhments to be Things ordained by the Wiſdom

[1] *De re militari.* [2] L. 3. c. 21. p. 290. L. 4. c. 7. p. 336. — c. 10. p. 354.
[3] I *Sam.* XVII. 38, 9. [4] *Fabric.* Bibl. Lat. III. 479.

'the King, and his Mouth ſhall not err in Judgment." Yet a 'Prince is not obliged to ſo Critical an Underſtanding of the Scriptures; ſuch as may become a Profeſſor in Divinity; a General Inſight and Acquaintance with them, as with the Laws, is all that is neceſſary and required of Him. Such had (f) *Charlemaine*; Such had (g) *Lewis* his Son; Such had (h) *Robert*, ſometime King of *France*, and who was Author of this Concluſion ["*Sancti* "*ſpiritûs adſit Nobis Gratia*] and many others, as the ſaid *Vincentius*, in the 15th Chapter of the ſame Book, evidently ſhews. Wherefore the Doctors of the Laws do ſay, that "An "Emperor carries all his Laws in the Cabinet of his own Breaſt." Not that He really and actually knows all the Laws, but as He apprehends the Principles of them, their Method and Nature, He

Wiſdom of GOD among Men: And ſince We know Political Order to be the Work of GOD, We ought to love it; and ſtudy to defend it; and modeſtly, for GOD's Sake, obey it, and give Thanks to GOD who preſerves it. What is this Divine Sentence which is in the King's Lips? It is the Laws, and Judgments according to the Laws. And beſides, GOD hath armed Kings with a Power to make Laws of their own, not repugnant to his Laws; but built upon them, either by Demonſtrations or probable Reaſons. GOD ſometimes moves the Mind of Kings alſo, and gives them ſingular Motions. Thus it was a Singular Motion in *Solomon*'s [5] reaſoning about the true Mother of the Child. And in the Judgment of *Gonzaga* in the laſt Age upon the *Spaniſh* Governor of *Milan* under him. Who having held a noble Perſon Captive a long time, would not deliver him to his Wife (when ſhe petition'd and offer'd a large Sum of Money for his Redemption) unleſs He might lie with her; and after He had obtained his Deſire, then cauſed her Husband to be killed, and delivered him dead to her. Which when *Gonzaga* heard, and had examined, he compelled him to marry this Woman; and, as ſoon as he had done that, he condemned him to be immediately beheaded, and gave her all his Eſtate. Dr. *Pat.* Par. Prov. c. 16. Arg. [c.] v. Mr. *Addiſon*'s Works, IV. 143 & ſeqq. *Guardian*, N° 99.

(f) *Charlemaine*, born about the Year 742, or according to others 747. He was carefully inſtructed in Religion, which He honoured with Reverence all his Life; He naturally lov'd Learning and Learned Men [6]; He founded the Univerſities of *Paris* and *Piſa*; He honoured the Laws of the Land, and would do nothing without the Advice of the three Eſtates; the good old Laws of the Empire He confirmed, and Excellent new Ones He added; He ſettled the Church-Affairs in five Councils, *Mentz*, *Tours*, *Challons*, *Rheims* and *Arles:* Called *Capitula Caroli Magni*. At his Meals He made ſome to read to Him the Hiſtory of the Kings his Predeceſſors, or ſome Piece of St. *Auſtin:* He heard all Complaints, did Juſtice at all Seaſons. — He bent all his Actions and Endeavours to the Welfare of his Subjects, and the Advancement of the *Chriſtian* Religion. *Grimſtone*'s Hiſt. *France*. *Mezeray*. *Collier*. *Platin*. 152. W. 591. *Sheringh*. 24. *Madox*, H. Excheq. 63.

(g) *Louis* I. called the *Debonnaire*, the *Pious* or *Meek:* He was Laborious, Sober, Vigilant, Liberal, very knowing and Learned, with a perfect Knowledge and Underſtanding in the Laws, and had ever a great Care to ſee them put in Execution. *Mezeray*. *Grimſtone*. *Collier*.

(h) *Robert* King of *France*, Son of *Hugh Capet*, Sirnamed the *Saint*, the *Devout*, and the *Wiſe*. Crowned 988, but he did not ſucceed his Father till 997. *Helgaldus*, in his Life, ſpeaks of him in a ſuperlative Manner. "That He was the Standard Example of Civil Life." The *Reſponſals*, which Our Text calls *the Sequence or Concluſion*, are ſaid to be his. He was compleat both in Body and Mind, of an handſom Stature, a ſweet and grave Air, a compoſed and ſage Humour: Having been nurtured to Piety and Good Learning, He became very knowing for that Age, and gave Countenance to Men of Letters: He was Juſt, Charitable and Debonnaire towards his People. *Mezeray*. *Grimſtone*. *Collier*.

To thoſe Inſtances might be added St. *Lewis* K. of *France*, A. D. 1226. in whoſe Hiſtory, written by *Joannes Jonvillæus*, there is not the leaſt Mention made of Guards or Garriſons, but only of Porters and Door-keepers; whom, in his Native Tongue, he calls *Uſhers* [7]. *Mezeray* [8] gives a great Character of this Prince, and *Hottoman* [9] is very particular out of *Jonvillæus*.

St. *Ericus*, who was King of *Sweden* in the 12th Cent. made ſuch Good and Juſt Laws, "That one would think they were not made by a King to his Subjects, but by an Indulgent "Father for his Children." W. *Jo. Magnus*, L. 19. *Puffendorf*. *Vertot*. One Inſtance of higher Antiquity is *Marcus*, who upon Account of his Virtues was called *Bountiful Father*, *Brave King*, a *Fortunate Captain*, a *Moderate Governor*. Herodian, L. 1. p. 467. *Edit. Sylburg*.

[5] 1 *Kings*, c. 3. [6] *Hickes* ad *Ottley*. *Sheringh*. Pref. fo. 1. b. Prol. *Mill*'s Gr. Teſt. Edit. *Kuſter* 100. a. *Rapin*, I. 292. * [7] *Hottoman*, F. G. 64, 79. [8] P. 313. [9] Ubi ſup. 139. & ſeqq.

may properly enough be ſaid to underſtand them all. Moreover, He has it in his Power to alter or abrogate them: So that all the Laws are in him potentially, as *Eve* was in *Adam* before ſhe was formed. But ſince, *My Good Chancellor*, You have now performed what You undertook at firſt, and have fully perſuaded me to apply my ſelf to the Study of the Laws of my Country, I will no longer detain You on this Subject. But, I now earneſtly deſire, that You will proceed, as You have formerly begun with it, to inſtruct me in the Principles, Method and Nature of the Law of *England*: Which Law, I am reſolved, ſhall be ever Dear to me, preferably to all other Laws in the World, which it as far ſurpaſſes, as the Morning Star exceeds the other Stars in Glory and Brightneſs. Since the Intention is anſwered wherewith You were moved to this Conference: Time and Reaſon require that We put an End to it. Rendring all due Thanks and Praiſe to Him who enabled us to begin, to carry on and finiſh it; Even *Alpha* and *Omega*, the Beginning and the End, the Firſt and the Laſt; And "Let every Thing that hath Breath praiſe the "Lord." *AMEN.*

I



FINIS.

ADDENDA, &c.

PAge 4. N. (d) *Druidæ*,] Wiſemen, Augurs, Soothſayers. From the *Celtic*, Draordhe. *Whitl.* M. 392. a. b. v. *Lucan.* Pharſal. L. I. 445. & ſeqq. *Plin.* N. H. XXX. I.

6, 7. Leonard Bruno Aretin, ou, d' *Arezzo*, Chancelier & Hiſtorien de la Republique de *Florence*. Il mourut vers le milieu du quinzième ſiècle. On voit à Florence ſon Epitaphe en ces mots: *Depuis la mort de* Leonard, *l'Hiſtoire eſt en deuil, l'Eloquence eſt müete, & on dit que les Muſes Grecques & Latines n'ont pu s'empécher de le pleurer.* Mabillon. (*Muſ. Ital.* Part I. p.165.) *Lenfant* Hiſt. Canc. *Piſe*, Amſt. 1727. p. 20. Pref. XX.

14. (i) Gardiner, Biſhop of Wincheſter, queſtioned how far the King could command againſt Common or Statute Law: Of which Himſelf had many Occaſions to be well informed. Cardinal *Wolſey* had obtained his Legatine Power at the King's Deſire, but notwithſtanding that, he was brought into a *Præmunire*: And the Lawyers upon that Argument cited many Precedents of Judges that were fined when they tranſgreſſed the Laws, though commanded by Warrants from the King; and Earl Typteſt, who was Chancellor, loſt his Head for acting upon the King's Warrant againſt Law. *Burnet R.* II. 38.

15. (3) Queen *Elizabeth* ſat in Perſon to hear Cauſes. Whitl. H. 230.

18. (h) The Book *de Regimine Principum*, ſo often quoted by Our Author in his Writings, is ſpurious and cannot belong to *Thomas Aquinas*. *Cave* [1] does not ſay enough of thoſe Books "De "Regimine, quos plurimi ſuſpectos habent." Du Pin [2] goes further. Beſides that the Stile of thoſe Books is quite different from that of *Aquinas*. The Author of thoſe Books ſpeaks of Adolphus of Naſſau (the late King William's Anceſtor) ſucceeding *Rodolphus* in the Empire, and being himſelf ſucceeded by *Albertus* of *Auſtria*, all which happened in the Year 1273, and 1298, ſome Years after the Death of *Thomas* [3]. There are aſcribed to this Author Seven other Books, *de Eruditione Principum*, which *Du Pin* ſays, are only in the *Roman* Edition. *Forteſcue* knew nothing of Thomas' Comment upon *Ariſtotles'* Politics; where both the Author and Commentator give Lectures of Tyranny, which have been ſince copied by *Machiavil.* Ariſtotle however in that Place ſeems only to be an Hiſtorian, and to ſay, that if Tyrants will preſerve their Power they muſt beggar their People, as Dionyſius [4] the Tyrant had done, and perhaps *Thomas* has ſaid no more. V. Aquin. Com. in Ariſtot. Politica, *Naude* coups d'Etat, p. 22—27. Fabric. Bibl. Gr. To. 2. Dr. L.

Ibid. (m) .... "At ille (*Samuel* ſc.) placidè, ſalubri oratione ab inſanâ voluntate detor-"quere plebem: Dominationem regiam & ſuperba imperia exponere, libertatem extollere: Ser-"vitutem deteſtari [5].

Joſephus, in his Account of the ſame Story, tells us that the People's deſiring a King gave *Samuel* a great Deal of Grief, - - -

or impriſon Men, chiefly when that is founded only on ſome Suſpicions. It is a Country govern'd by Law. Men of the Duke of *Northumberland*'s Quality are never put in Irons in England [1].

Page 41. The Diſherited *Barons* and others defend the Iſle of *Ely*; and in all this Time, from *W.* 1. no Execution of Blood but in Battle, none died on a Scaffold, only one *Mariſc*, a Nobleman of *Ireland*, condemned of Piracy and Treaſon (26 *H.* 3.) was hanged, beheaded and quartered; the firſt Example of that Puniſhment. 25 *Hen.* 3. Stealth of Cattle made a Crime Capital; the firſt who is ſaid to ſuffer for it, was one of *Dunſtable*, who was hanged and beheaded for it. *Whitl.* H. 86,7.

Ibid. In the Reign of *Ed.* I. *David*, Brother of *Llewellyn*, Prince of *Wales*, was taken and adjudged in *England*, and drawn at a Horſe-tail about *Shrewsbury*; then beheaded, his Body divided, his Heart and Bowels burnt, his Head ſent to accompany that of his Brother on the Tower of *London*, and his Four Quarters to Four Cities: The firſt Execution of that Kind in *England*, in the Perſon of a Son of a Prince (who had more Right on his Side than his Executioners) or any Nobleman *. This grew afterwards uſual; and this King (*Ed.* I.) under whom it began, had the Blood of his own and his Brother's Race miſerably ſhed on many Scaffolds. And, to Seal this Conqueſt, his eldeſt Son *Alphonſus*, Twelve Years of Age, is taken away by Death. Ib. 90. * V. *Fieta*, L. 1. c. 16. 4 *Inſt.* 239.

66. (b) In the Appeal of the Cardinals from *Gregory* XII. to the Council, and upon his Threatning to impriſon them, the Cardinals inſiſted upon it, that he had no Right to threaten them with Impriſonment, or depoſing them, much leſs with Death, upon ſlight Occaſions, ſeeing that they are Perſons of Rank and Character in the World; for this Purpoſe He ought to convict them in all the Forms, and with great Solemnity. *L'Enfant* Hiſt. Conc. *Piſe*, Part 1. p. 197.

70. h. (20) In the Parliament 9 *Ed.* 3. Wool was prohibited to be tranſported unwrought, and that none ſhould wear other than *Engliſh* Cloth, except the King, Queen, and their Children: Our firſt ſumptuary Laws. *Whitl.* H. 105. * 110. *

Ibid. Legem Mercatoriam,] An. 11 *Hen.* VII. was concluded an Amity and Intercourſe by Articles of State, Commerce and Free Fiſhing between the *Engliſh* and the *Flemings*, which is called *Intercurſus Magnus* to this Day [2]. Riſe of the Company of *Turkey Merchants* in the Reign of Queen *Elizabeth* [3]. Tobacco firſt brought into *England* by Sir *Walter Raleigh* [4]. Queen *Elizabeth* founded the Company of *Eaſt-India Merchants* [5]. Laws againſt Couſenage in making Cloths. Of Monopolies [6]. V. *Rapin*, Acta Regia, by *Le Clerc*, IV. 167. 281.

75. a (22) *Digeſt.* Lib. Tit. 4. de *Conſtitut. Principum*, Leg. 1. init. *Inſtitut.* Lib. 1. Tit. 2. § 6. and Dr. *Duck*, p. 36. *Wiſeman*, p. 32. *Still.* Illegality of the H. Com. &c. Fo. *Lond.* 1689. p. 64. *Burnet*'s H. Ref. Vol. 2. pp. 38. 277, 8. v. *Le Clerc.* Bibl. Choiſie, VII. 229. XI. 224. See the Coll. before the Lord *Bacon*'s Works lately publiſhed, 4 Vols. Fo. I. pp. 65, 6. 95.

Ibid. The Name and Dignity of King has continued in *Poland* without Interruption, ever ſince *Primiſlaus*, who was crown'd by the Archbiſhop of *Gneſna*, in the Year 1295, but with a limited Power. For tho' the Prince has the Supream Command, yet the chiefeſt Authority remains in the Senate of the Kingdom; the Commonalty being excluded from having any Share in the Adminiſtration of the Government. Therefore, whereas among other Princes *what pleaſes the Sovereign, obtains the Force of a Law*; here the King can make no Law without the Advice and Conſent of the Senate, and is himſelf bound to obey the Law ſo made. Nevertheleſs, the Majeſty of the Kings of Poland, and the Veneration which their Subjects pay 'em, is incredible, eſpecially when they rule according to the Law. For, which is a Matter of High Conſequence, the chief Power of judging according to the Law is in their Hands, and tho' they cannot pronounce any Capital Sentence without the Authority of the Publick Judicature; yet they have Power to pardon both Fines and Capital Puniſhment incurr'd by Tranſgreſſion of the Law, &c. *Thuanus.*

85. (b) Sub finem. *Whitl.* M. 345. a. 346. b. *Ariſtot.* Pol.

91. Manſer,] v. *Fabric.* Bibl. Gr. VIII. 773.

102. (c) Sub finem. With K. *Alfred*'s Sons, were bred, under the beſt Maſters, almoſt all the Children of the Nobility, which ſome conjecture to have been the Foundation of Wardſhips. He was the firſt Learned Prince We read of in *England.* Whitl. H. 23.

105. (b) Upon the Death of *Harold* ended the Line of the *Saxon* Kings, about 500 Years after the firſt Invaſion by *Hengiſt*; and now We muſt come to the *Norman* Kings and their Race. The greateſt Change that ever did or could happen to this Nation; yet I am not of Opinion, that hereby followed a General Change of Our Laws, Cuſtoms, Faſhion, &c. the contrary will appear upon many Occaſions; but many Innovations muſt neceſſarily be introduced by theſe new Maſters. W. 1. never was, nor pretended to be the Conqueror of *England*, tho' the Sycophant Monks of the Time gave him that Title. Ib. 30. 33.

106. c (32) Sub finem. A Writ of *Error* is proper to Record, and from Record, and a Plea of *Nul tiel Record* is not triable by Witneſs or *Jury*, but only by it ſelf in a Court of Record. Such are the Sheriffs Turns, and from them (as from *Counties*, *Hundreds*) came the Court *Leets*; which may be held by Preſcription againſt the *Great Charter:* In which *Leets* the Steward is Judge; as in the *Turns* the Sheriff and Biſhop was, till the firſt *Norman*, who by Parliament exempted the *Clergy*. But the Laws of *Henry* I. bring them again into the *Seculars*. So alſo the 10th of *Marlbridge*; and before it the Laws of *Clarendon* for all *Barons*, or Tenants *in Capite* to attend the Great Court till Sentence of Life or Member, which continued long in the Parliament alſo. Sadler, p. 307.

---

[1] *Burnet* on *Varillas*, Tom. 3, 4. pp. 27. 87. 125. [2] *Whitl.* H. 188. v. ib. 196. [3] Ib. 249. [4] Ib. 256. [5] Ib. 276. [6] Ib. 281.

ADDENDA, &c.

Page 108. (e) An Order for conſtituting Reporters of the Law in the Courts of *Weſtminſter*, dat. October 24th, 1617. at *Weſtminſter*, Acta Regia IV. 316.

113. In the Stat. of Weſtminſter 1. 3 Ed. 1. A Serjeant at Law is called *Sergeant Countor*; and in the Stat. 28 Ed. 1. c. 11. is this Clauſe, " Neſt my a entender que home ne poet aver Coun-" cil des *Countors* & des Sages Gents [1]. V. *Whitlock*'s Speech upon Mr. Serjeant *Puleſtone*'s, and Mr. Serjeant *Warberton*'s being ſworn in Judges of the Common Pleas. *Whitl.* M. 392.

117. (b) Sub finem. " *Totius* Angliæ *Aldermannus* [2], i. e. L. C. J. *Odo* of *Bayeux*," Juſticiarius totius *Angliæ* [3], Glanvil, " Summus Juſticiarius *totius Angliæ*. *Sadler* 249.

118. (e) In *Edward* the Third, the Judges Oaths were made, and ſtand among the Statutes as enacted by Parliament (altho' I do not find it ſo upon the Rolls.) Ib. 77.

c. 8. N. i. v. Stat. 14 E. 3. c. 14. Parliament Roll 45 *Ed.* 3. N° 44. and 2 R. 2. N° 51. all theſe are only Declaratory of the Common Law, as is evident before any of theſe Statutes, by the Cloſe Roll, 7 E. 2. M. 15. where, in a Writ to the Chief Juſtice of the Common Pleas, the King commandeth, " Quod propter aliqua Mandata vobis ſub magno aut privato Sigillo, they ſhould not " forbear to do Right, *juſtitiam nemini denegando, nec etiam deferendo:*" And in our Books 1 *Ed.* 3. fo. 26. 2 E. 3. fo. 3. if the King command the Judges to do that which cannot be done by Law, they ſhall not do it. *Whitl.* M. 345. a. ubi v. plura. *Sadler* 89. 275. b.

120. *Ad Perviſum,*] Sir *Roger Owen* in his MS. allows the Serjeants but little State, where He ſaith, " They kept their Pillars at Pauls, where their Clients might find them, as if they did little better, than *emendicare panem*. This is all grounded upon a Miſtake of one of their Ceremonies of State, when they went to *Paul*'s to offer. A MS. of the Call of *Fitz James*, 11 H. 8. ſaith, " That " their Steward brought every one of them to a ſeveral Pillar in *Paul*'s, and there left them a Time " for their private Devotions." In the Regiſter a Writ *ex gravi querela* mentions a Deviſe to a Prieſt, to ſay Maſs at a Pillar in *Paul*'s; and I believe moſt of us, both in this and other great Churches, have ſeen old People kneeling at the Pillars, in their Private Prayers. A *Counter* was a Serjeant, and a *Vavaſour* was the next in Degree to a Baron. *Whitl.* M. 248.

121. (n) Sir *Henry Bath* got a great Eſtate in his Place by Bribery and Corruption. One Evidence againſt him was a Fellow Judge, who accus'd him of Acquitting a Malefactor for a Bribe. See his Caſe, *Kennet*, p. 180. a. ad An. 34 Hen. 3. A. D. 1251.

Ibid. A Chancellor of *England* charged with Perjury for taking Half a Mark for Sealing of a Writ. *Sadler*, p. 7. v. ib. 297, 8.

129. (h) *Robert*, King of *France*, the Son and Succeſſor of the Great *Hugh*, is much and deſervedly praiſed for his Courage, Juſtice, Modeſty and Religion; for, tho' He exerciſed himſelf very much in the Art Military, yet he found Time ſo often to frequent the Churches of GOD, and to celebrate the Divine Service, as if he had been in Holy Orders. He is ſaid to have made the Hymn, *Sancti Spiritûs aſſit nobis gratia:* And by theſe Arts not leſs Powerful, than his Arms, he gain'd the Hearts of the People, and drew thoſe honourable Reſpects to his Family which they had before given to that of *Charles* the Great. *Platina* by *Rycaut*, p. 193.

c. 35. (a) The Emperor *Wenceſlas*, eldeſt Son of *Charles* 4. and Brother to *Sigiſmond*, governed the Empire like a Tyrant; or rather like an Executioner, whom he always carried about with him, and called him his *Compere*. One of the Articles againſt him was, that by Means of his ſaid Executioner, or Hangman, he had maſſacred, drowned and burnt ſeveral of his Biſhops, Prieſts, Eccleſiaſtics, and many other Perſons of Diſtinction. He was depoſed by his Subjects. *L'Enfant* Hiſt. Piſe, Part 1. 107.

(c) 39. Sub finem. King *Ethelſtane*, a Natural Son, and ſo excluded from the Crown by Act of Parliament at *Calcuth*. *Sadler* 64. 264.

41, 66. Of Fire *Ordeal*, v. *L'Enfant*, Hiſt. Conc. *Piſe*, Part 2. p. 123.

AS theſe Papers were finiſhed ſo long ſince as *October* 1731, when it was ſent to *London*, and as the Date of the Preface, (when the laſt Hand was ſet to it) is *April* 1732. It is natural, during ſuch an Interval of Time, to touch Both over and over again, beſides what Additions and Alterations ſuch a Work is liable to, in a Courſe of little Leiſure and ſome Reading ever ſince; theſe Things conſidered, I hope I ſhall not incur the Reader's Cenſure for the few Additions I have made. If it be objected that the Quotations are too numerous, the Anſwer muſt be, that my Deſign was to make it as full and uſeful as I could. A great many Gentlemen have, in their Private Collection, moſt if not all the Authors I have had Occaſion to refer to; others have many of them to conſult upon Occaſion, where I may have been thought leſs exact, or not ſo copious. The Article of *Whitlock*, which has been lately inſerted in the Preface, is very particular, becauſe He is an Author, who does not ſeem ſo well known as He deſerves to be. There are ſeveral Facts in his *Memorials* which are very curious, ſeveral Speeches and Conferences which are both Learned and Judicious, as well as entertaining. The Whole has been ſubmitted to the Peruſal of a Great Man in *Weſtminſter-Hall*, and I have his Approbation in ample Terms. The Stricture upon *Aquinas*, and the Obſervations on the *Iſraelites* asking a King and being anſwered in their Petition, (1 *Sam.* cap. 8. 12.) I am indebted for to my Learned Friend Dr. *Lombard:* It is a Juſtice due to him to pay this Acknowledgment in a publick Manner, as He has for many Years honoured me with his Correſpondence, and given me great Lights into ſeveral Parts of Learning which otherwiſe I muſt have been an utter Stranger to.

January, 1734.

---

[1] *Whitl.* M. 350. a. [2] *Sadler* 229. [3] Ib. 249.

A CATALOGUE *of the moſt conſiderable* AUTHORS *quoted in the Notes and Remarks to this* BOOK, *and the Editions I have uſed and refer to.*

Quinas,] De Regimine Principum. Lib. 4. 24°. L. B. 1630.

Baker,] Chronicle of the Kings of England. 3d Edit. Lond. 1660.

Bacon, Nath.] Hiſt. Diſcourſe of the Government of England. 1ſt Part 4to, Lond. 1647. 2d Part ib. 1651, both reprinted, Fol. ib. 1682, 1689, (which Edition I uſe) a third Time 1695. [Nicholſon's Eng. Hiſt. Lib. 8°. Part 3d, p. 23.

Mr. Bayle,] Dictionaire Hiſtorique & Critique. 3me Edition, 4 Vol. Fol. Rot. 1720.

Buchanan,] De jure regni apud Scotos, Appendix to the Hiſtory of Scotland. I. A Detection of Mary Queen of Scots. II. *De jure, &c.* or a Diſcourſe concerning the due Privilege of Government in the Kingdom of Scotland. Eng. 8°. Lond. 1721. This laſt is one of the Books which was ordered to be burnt in Purſuance of the famous Oxford Decree, July 21. 1683. Which Decree by an Order of the Houſe of Lords was afterwards burnt by the Hands of the common Hangman, as containing in it ſeveral Poſitions contrary to the Conſtitution of this Kingdom, and deſtructive to the Proteſtant Succeſſion as by Law eſtabliſhed. See Dr. Sacheverel's Trial, Fol. 326, 7. Kennet Hiſt. Eng. III. 410. & ſeq. Eachard, III. 695. Rapin, XIV. 337.

Boethius de Conſolation. Philoſoph.] An. Manl. Sever. Boethii Conſolationis Philoſophiæ, Lib. V. L. B. Ex. Off. Hack. 1671.

———— Made Engliſh by the Lord Preſton. 8° Lond. 1695.

Camd.] Camden's Britania, publiſhed by Gibſon. Lond. 1695.

Camd. El.] Hiſt. Q. Elizabeth. Eng. Fol. ib. 1630.— Kennet, II. p. 361.

Collier,] Dictionary, Supplement and Appendix. 4 Vol. Fol.

Comines,] Memoirs of France by Mr. Uvedale. 2 Vol. 8°. Lond. 1712.— Scandalous Chronicle, printed at the End of it.

Cic.] M. Tullii Ciceronis Opera ex recenſ. Iſ. Verburgii, 4 Vol. 4to. Amſt. ap. Wetſtenios 1724. denoted by the Initial Letter V. where I refer to any other Edition, it is obſerved in the Body of the Notes.

Cowel's Int.] Interpreter, containing the Signification of the Terms in Our Laws. 2d Edition, by Mr. Manley.

Calvin,] Lexicon Juridicum, Fol. Genevæ 1622.

1, 2, 3, &c. *Co.*] The Lord Coke's Reports, Part 1, 2, 3, &c.

Dugd.] Dugdale's Origines Juridiciales. 2d Edit. Fol. Lond. 1671.

Dr. Duck,] De uſu & Authoritate juris Civilis. 8°. Lond. 1679.

Eachard,] Hiſt. England. 3 Vol. Fol.

Eraſm.] Colloq. Var. 8°. Amſt. 1693.

Du Freſne,] Gloſſarium ad Scriptores Mediæ & infimæ Latinitatis, Auctore Carolo Du Freſne, Domino Du Cange. 3 Vol. Fol. Francofurti ad Mœnum. M.DCC.X.

Fleta,] Selden. Edit. 2da, 4to. Lond. 1685.

Forteſcue,] Of Abſolute and Limited Monarchy. A Treatiſe written by Sir John Forteſcue, Knt. L. C. J. and Lord High Chancellor of England, publiſhed with Remarks, by John Forteſcue Aland, Eſq; F. R. S. 8°. Lond. 1714.

Fuller,] Church Hiſtory of Britain. Fol. ib. 1665.

Fox,] Book of Martyrs. The old Edition.

Fountaine And. Eq. Aur.] De Numiſmatibus Saxonicis & Dano-Saxonicis. Hickes' Theſ. Lib. 1. poſt d. e.

A. Gellius,] Ant. Thyſi & Jac. Oizeli 8°. Lugd. Bat. 1666.

Grotius,] De jure Belli ac Pacis cum Nott. J. F. Gronovii. 8°. Amſt. 1689.

Godwin,] Rom. Antiqq. 15th Edit. 4to, Lond. 1689.

Hawkins,] Pleas of the Crown. 2 Vols Fol. ib. 1716.

———— *Abr. Co. Lit.*] Abridgment of the Firſt Part of the Lord Coke's Inſtitutes. 12°. Lond. 1711.

Heylin,] Coſmography. Fol. ib. 1657.

Hickes Ling. Vet. Sept. Theſ.] Linguarum Vett. Septentrionalium Theſaurus, Grammatico-Criticus, & Archæologicus, Auctore Georgio Hickeſio. Nota, g. a. denotat Grammaticam Anglo-Saxonicam & Mæſo-Gothicam, g. f. Grammaticam Franco-Theotiſcam, g. i. Grammaticam Iſlandicam, d. e. Diſſertationem Epiſtolarem, pr. Præfationem Generalem, pr. g. a. Præfationem Grammaticæ Anglo-Saxonicæ, pr. g. f. Præfationem Grammaticæ Franco-Theotiſcæ, pr. g. i. Præfationem Grammaticæ Iſlandicæ, p. l. c. m. Paginam, Lineam, Columnam, Marginem.

Hickes ad Ottleyum,] Auctoris de Opere ſuo Præfatio.

1. 2. 3. 4. *Inſt.*] Coke upon Littleton — Expoſition of Magna Charta, &c.— Pleas of the Crown and Juriſdiction of Courts.

Juſtinus,] Ex recenſ. J. G. Grævii, Edit. 4ta. Lugd. Bat. 1701.

Kennet,] Complete Hiſt. England, 3 Vols. Fol. 2d Edit. Lond. 1719.

Kennet B.] Antiqq. of Rome. 3d Edit. 8°. Oxford 1704.

Mezeray,] Hiſt. France. Tranſlated by J. Bulteel. Fol. Lond. 1683.

Mr. Maddox,] Hiſt. Exchequer. Fol. ib. 1711.

Mr. Madox Form. Angl.] Formulare Anglicanum. Fol. ib. 1702.
——— Firma Burgi. Fol. ib. 1726.
Nicholſon,] Eng. Hiſt. Library. 3 Vols. 8°. ib. 1696,7.
——— Scotch Hiſt. Library. 8°. ib. 1702.
——— Iriſh Hiſt. Library. 8°. Dublin 1724.
——— *Leges Marchiarum*, or Border-Laws, 8°. Lond. 1705.
——— Diſſertatio Epiſtolaris ad Wilkins. Denoted by d. e.
Paris, Matth.] Watt's Edit. Lond. 1684. cont. pp. 1175.
Plutarch,] Morals. Tranſlated from the Greek by ſeveral Hands. 3d Edit. 5 Vols. 8°. ib. 1694.
Plin. Pan.] Ed. Baudii ac Var. 8°. Lugd. Bat. 1675.
Potter,] Antiqq. of Greece. 2 Vols. 8°. Oxford 1699.
Pitiſc.] Lexicon Antiqq. Rom. Auctore Sam. Pitiſco. 2 Vols. Fol. Leovardiæ 1713.
Pacius,] Analyſis Inſtit. Imperial. 8°. Trajecti ad Rhenum 1663.
——— In Inſtit. Dig. ſeu Pandectas. Cod. Decrett. accurante G. à Waſſenaer. J. V. D. 8°; ib. 1680.
Quinctilian,] Var. ex Officina Hack. 1665. 2 Vols. 8°.
Ralegh, Sir Walter,] Hiſtory of the World, in 5 Books, Fo. Lond. 1614.
Rapin, Thoyras,] Hiſtory of England, by Tindal. 15 Vols. 8°.
——— Acta Regia, by Whatley. 4 Vols. 8°.
Speed,] Hiſtory of Great Britain. 2d Edit.
Sen.] Senecæ Epiſtolæ ex recenſ. J. Lipſii & J. F. Gronovii. 12°. L. B. ex Off. Elz. 1649.
Somner,] Gloſſary to the X. Scriptores.
——— *Dictionar. Saxon.*] Dictionarium Saxonico-Latino-Anglicum, Opera & Studio Gulielmi Somneri.
Spelm.] Spelman's Gloſſary. Fo. Lond. 1664.
Speculum Saxonicum,] Seu jus provinciale. Ed. Goldaſtus. Du Freſne's Index Auctorum (prefixed immediately before his Gloſſary) p. 176. M. Goldaſti Collect. p. 126. Nicholſon d. e. præmiſſ. Wilkins III.
Spotiſwoode,] Hiſt. Scotland. 4th Edit. Fol. Lond. 1677.
Skene,] De verborum Significatione. 4to. ib. 1641.
Stowe's Annals,] Edit. 1631.
Rerum Anglicarum Scriptores poſt Bedam præcipui editi per Savillum. Fol. Francofurti 1601.] William of Malmesbury. Henry of Huntingdon. Roger Hovenden. Ethelwerd's Chronicle. Ingulphus. This laſt imperfect. See the Oxford Edition, by Dr. Fell, Inter Rerum Angl. Script. Fol. Oxon. 1684.
Tilbury, Gervaſe of] The Ancient Dialogue concerning the Exchequer, generally aſcribed to *Gervaſius Tilburienſis*, publiſhed by Mr. Madox at the End of his Hiſtory of the Exchequer.
Temple, Sir William] Introduction to the Hiſtory of England. 3d Edit. 8°. Lond. 1708.
Mr. Tyrrell,] General Hiſtory of England. 4 Vols. Fol.
——— *Bibl. Polit.*] Bibliotheca Politica in Thirteen Dialogues, lately reprinted in Folio.
Mr. Waterhouſe,] Commentary on Forteſcue de Laudibus. Fol. Lond. 1663. often denoted in this Book by the Title of the *Commentator*, and by the Initial Letter W.
Weſtminſter, Matth.] Fol. Lond. 1570.
Wood,] Inſtitute of the Imperial Law. 8°. ib. 1704.
——— Inſtitute of the Laws of England. Fol. ib. 1722.

Mr. *Sadler*'s Treatiſe of the Rights of the Kingdom and Cuſtoms of our Anceſtors. 4to. *Lond.* 1682. pp. 319. Recommended by *Mr. Locke* (Remains 8*vo. Lond.* 1720. p. 238.) as a Treatiſe in which is to be found the antient Conſtitution of the Government of *England*. It is alſo quoted in *Lex Parliamentaria*. Pref.

Whitlock's Memorials of *Engliſh* Affairs, or an Hiſtorical Account of what paſt from the Beginning of King *Charles* I. to the Reſtoration of King *Charles* II. Fol. *Lond.* 1682. Publiſhed by *Arthur Earl of Angleſea*, with a Preface by *Mr. Rymer*. It has a very bad Index, and the Book it ſelf is miſpaged in many Places; occaſioned, I ſuppoſe, by it's being work'd off at different Preſſes. It is rather a Diary or Journal. *Mr. Pen*, in his Introduction to the Hiſtory of *England*, writ by the ſame Great and Learned Perſon, apprehends that it is caſtrated of many excellent Paſſages: For what appears, there does not ſeem any great Reaſon for the Suſpicion ——— *Memorials* of *Engliſh* Affairs from the ſuppoſed Expedition of *Brute*, to the End of *James* I. Publiſhed by *Mr. Pen. Dr. Wellwood*, in the Preface, calls it, The Engliſh *Florus*, Fol. *Lond.* 1709. pp. 310. The firſt is denoted by M. the laſt by H.

Sir Robert Wiſeman's Excellency of the *Civil Law*. 8vo. *Lond.* 1686. pp. 319.

A CATALOGUE *of the* BOOKS, &c. *written by Sir* John Forteſcue *in the King's and Cotton Libraries, as in Mr.* Caſley's *printed Catalogue*, 4*to.* Lond. 1734.

Otho.

B. I. 1. JOhannis Forteſcue, Militis, de Legibus Angliae Liber.
2. Of the Difference between Dominium Regale and Dominium Politicum Regale. Fo. 40.
3. Defenſio juris domus Lancaſtriæ. Fo. 98.
4. A Defence of the Houſe of Lancaſter, one Leaf. Fo. 110.
5. Sir John Forteſcue's Genealogy of the Houſe of Lancaſter. Fo. 111. (but ſhould be 91. being miſplaced by the Binder).
6. Of the Title of the Houſe of York to the Kingdom of England. Fo. 92.
7. Genealogia Regum Scotiae ab Adamo uſque ad Jacobum 2. Fo. 96. b.
8. Sir John Forteſcue's Defence of the Houſe of York, and of King Ed. 4. Fo. 67. Caſley 321.
17. D. VIII.—XV. 3. Sir John Forteſcue's Declaracioun upon certayn Wrytingis ſent oute of Scotteland ayenſt the Kingis Title of his Roialme of Englond. 4 Balletts. ib. 270.

INDEX.

OF the old Abſolute Regal Government. Page 20
Academiæ Galliæ Illuſtres. 112
Academy, Gymnaſium. 102, 111
Libellus Accuſationis. 54
Ad Auctiva particula. 10
Of the Emperor Adrian. 85
Addretiare. 126
Adjuro. 10
Addiſco. ibid.
Court and Juriſdiction of the Admiralty. 67
Admirals, firſt mentioned in the Engliſh *Law, and where.* 67, 68, 69
Trials in the Admiralty by a Jury of Twelve. 68
Ægidius de Roma. 18
Ædiles. 31
Ægypt, Kings of, how declared. 1
Affidati. 73
Affidation. ibid.
Agri. 61
Richard Fitz Alan, the younger, Earl of Arundel and Surrey, created Admirallus Angliæ. 69
King Alfred, his Character. 102, 121, 122. *Whitl. H.* 23.
—— *A Law of his.* 103
Alexander, a Story of him. 1
Alderman. Ealdorman. 48, 49
King Alfred divides the Shires into Hundreds, Laths and Wapentakes. 47
Of Alpharabius. 5
Aluta. 79
Amends. Emendas. 83
Amboyna, of the Dutch. 43
Antiſtes Juris. 5
Anbelo. 2
The Angles. 30
Aptus. 62
Apparatus. 80
Of Apprentices at Law. 15, 111, 116
—— *A Regulation of them.* 15
Apprenticii ad Barros. 15, 111
Leges Apparentes. Loix Appariſans. 66
Super Aquam. 69
St. Thomas de Aquina. 18, 84, 86
Array. 52
Men at Arms. 80
Frank-Archers. ibid.
Arraigned. 83, and XXVII. N. a.
D'Argentre quoted. 111
Arretamentum. 126
Arreniatus. Page 126
Jus eſt Ars Boni & Æqui. IX.
Aretinus, Leonardus. 6, 7
Ariſtotle quoted. 9, 40, 103, & *alibi.*
Caſe of the Earl of Arundel. 59
Arctabant. 78
Works ridiculouſly attributed to Ariſtotle. 5
Aſſyria. 21
Magna Aſſiſa. 52, 66
Trials of Aſſurance by Policy, a beneficial Law. 70, 71
Caſe of the Earl of Athol. 44
Character of Athens. 111, 112
Attaint, Judgment in, 55
—— *Whitl. H.* 187. *Sadler* 296.
A Law of the Athenians. 14
Of Attornies. 15
The Authentics. 29
M. Aurelius. 130
Aviditas. 1
De Auctore Cauſarum, a Book ſo called, 5
Averroes. 13
Auxilium. 17, 30
St. Auſtin. 21
Avempace. 5

Barons. (*Sadler* 88, 95). 63
Baſtardus. 91, 92
Baro. 51, 63, 115
Baron, Court. 63, 106
Baſtard, Baſtardy. 87, 88. XXXIX. XL. 89
Why Baſe-born Children are not legitimated in England by ſubſequent Marriage. XXXIX.
Baronage, their antient State. 101
Baſtards generally of a brave Spirit. 91, 92
Bards, who. 32, 33
Bacon, Roger. 74
Purgations by Battle, &c. 41, 52, 66
Bailiff. 62
Baronagium Angliæ. 63, 101
Baſtards antiently, by the Laws of the Church, diſqualified for Holy Orders. 91
Caſe of the Lord Bacon. 122
Vincentius Belluacenſis. 128
Benchers. 15
Belus. 20
Sons of Belial. 38

INDEX.

Bernardus Presbyter. Page 67
——— *Dorna.* ibid.
Benevolence, a Tax in Ed. 4.'s Time, so called. 76. *Odious.* ibid.
King's Bench. 117
Judge Berkley's Case. 122
Birrettum. 115
Half-Blood. 9
Bladum. 62
Blois, Peter of. 31
Blanks, a Coin. 125
Boetius quoted. 27
The Boot, a Punishment in Scotland. 43
Of Bond and free. 94, 95, 104
Bockland. (*Sadler* 168.) ——— 71
Of Boroughs. 47
Summum Bonum. 6, 7
Count de Boulanvillier's Account of France. 79

Brute, *Story of.* 23, 32
Sadler. 31
Britannia. 32
Brevia. Breve Regis. 50, 108
Britons learned Arts, and exceeded the Gauls in Wit, &c. 31, 32
——— *From Japhet and his Posterity.* 33
Bracton. 85
A Law of Brittany. 111
Buchanan quoted. XIII. N. 4
Burgbote, Brigbote. 30

Cancellarius. 117. *& seq.*
Cancellaria. 106
Capilli rasura, pœnæ genus. 17
Caulas. 62
Of the Cardinals, their Privilege not to be impeached. 66
Caligæ. 79
How the Laws of England proceed in Criminal Cases. XXVII.
Caputium, Cappa. 115, 119
Mr. Carstare's Case. 43
Capillorum Honor. 17
Causæ Status——— Compositio. 36
Litium Cardo. ibid.
Sextus Cæcilius. 39
Cambridge, an antient City. 48
Caligula. 75
Sp. Cassius. 78
The King of France's Cavalry. ibid.
Capitis Diminutio. 104
Palatii Causidici. 117
Celeris Justitia. 70
Sealing Charters. 71
The Chancellor, an Account of him. 110
Challenge. 52, 58
Chlamys. 119
Of Charlemaine, King of France. 129

The Change of Laws and Language. Page 105, *& seq.*
Chirographa Carta. 71, 72
Chartæ. 15, 71
Children begot before Wedlock. 87
——— *When they follow the Mother, when the Father.* XLII.
Court of Chivalry, its Manners, and how they were tried there. 69
Character of C. I. 77
City. (*Sadler* 159) 47, 48
Vindication of the Civil Law: Some Rules of the Civil Law observed in Trials. 38
Cities had a Beginning before Bishops. 48
Clergy, *Benefit.* 98
Clarence, Duke of, put to Death. 41
Comes. 49
Tenentes Conjuncti, &c. 127
Comitiva. (*Sadler* 86) 23
Colendissimus. 6
Toto conamine. 8
Litis Contestatio. 36
Of Contracts. 45
Counties, what, how divided. 47
Counsel. 54
Coroners. 52, 53, 68
High Constable of England, what the Jurisdiction. 69 *& seq.*
Forum Contentiosum. 73
Collobium. 80, 119
English Constitution, the Happiness of it compared with that of France. XXXVI.
Contubernium. Connubium. 94
The King's Court, Privileges. 101, 102
Conquests of Us by the Romans, Saxons, Danes and Normans. XVII.
Corpus Comitatus, what. 37, 67, 68
Several Colonies from Rome in Brittany. 31
Cotton, Sir Robert. ibid.
Collata. 17
Conquest and Consent mutual. 20
Cœtus. 21
Of the Code. 28
Regni Concilium Conventus. 34, 35
Colloquium. ibid.
De Corpore Comitatûs. 37
Sir John Coventry's Case. 40
Case of Sir Edward Coke. 50
Thani Consacramentales. 51
Compurgatio. ibid.
Lord Coke's Authority impugned. 52
Breve de Convictione. 55
Donationum Codicilli. 71
Concubine, Vice-Conjux. 87, 90, 94
Servile Consortium. 94
Courtesy of England with Respect to Women. 95

INDEX.

Court of the Steward and Marshal of the King's House. Page 101, 102
County Court. (*Sadler* 170) 107, 118
Confluunt. 109
Countors. 113
Coifa. 115
Crake, William de, Admiral. 67
Cross-bow-Men. 80
Customs, Consuetudines. 28
Customs of England, very antient. 34
Custodiæ. 100
Cuttings, what. 17
Curator, Custos. 98
Curiales. 117
Cynosarges. 102

The Date of Deeds. 71
Daniel. 39
Danelage. 31
Danegeld. 30
No Change of the Laws happened by the Danes. 31
Damages. 124
Depilor. 17
The Book of Deuteronomy prescribed to be read by the Prince. 3
——— *Why?* 5
Delays hated by the Law, those which happen are mostly necessary and reasonable. LII. LIII.
Decuriones. 31
Devana, Chester. ibid.
Demandant. 124
Discoli. 18
Disratio. 126
Of the Digest. 28
Of Dionysius. 77
Dies Juridici, non Juridici. 120
Digg's Case. 68
Capitis Diminutio. 104
Donationes. 71
Dominium Politicum, what. 16. XIII. XLII. 86
Domus Regia. 101, 102
Of the Druids. 5
Druids established Laws in England before the Romans. 32
Draco. 103
Duel. (*Sadler* 228) 106
Dupondii. 15
Duumviri. 31
Of Empson and Dudley. 59, 75, 122 *Whitl. H.* 194.

Of Prince Edward, his Character. Introd. lxiii

Of Ed. II. *and Pierce Gaveston.* Page 26, 59, 76, 86
Ed. IV. *his Cruelty.* Introd. lxiii
Ed. I. *sat as a Judge.* 16, 121
Of King Edgar. 69, 121
Of Ed. III. ibid. 76
Of Edward the Confessor. 105
Of King Egbert. 30
Elements. 13
Of Q. Elizabeth. 84
Emendas. 83
Emparlances. Induciæ. 127
England, its Commendation and Commodities. XXIX. XXXVI.
——— *Comines's Character of it.* 61
Englesherie. 37, 106
Character of the common People of England. 62
Of Epicurus. 6
Equuleus. (*le chevalet*) 42
Erectus. 3
Of St. Ericus, King of Sweden. 129
Essoins, how, and why allow'd. 124, 125 (*Sadler* 252)
Escaeta. 9
Esquire. 62
Escuage. 99, 100
The true Estates of France ceased under the Reign of John I. 78
Etymology. 14
Evenus. 10
Barons of the Exchequer. 115
——— *Court of,* 106
Executioners. 45
Exculpation (*Disculpation*). 126

Favores convenit ampliari. 98
Felonia. 58, 104. XLVII.
Feriæ, dies Feriati. 111
Liber Feudorum. 29
Feudatarius. 100
Trials by Fire. 66
Fossa. Furca. 107
Fringe, his Case. 40
Frankleyne. 62, 63
Freeholders, Libere Tenentes. 63
France, its Fertility and Misery. XXXV. *& Nott.* ibid.
French Government tends to the Misery of the Subject. ibid.
Frank-Archers. 80
Frocks. 80, 81
Court of the Freeborough or Tithing. 106
The true Estates of France ceased under the Reign of John I. 78

Of

INDEX.

Of Pierce Gaveſtone. Page 26, &c. Whitl. H. p. 100.
The Gagg. 42
Gaoler, at Common Law, could not lay on Irons. 41
Ley gager. 56
Of the Franco-Gallican Government. 17
Galla. 79
Galloches. ibid.
Gereſa. 49
Michel-Gemot. 35
Witena Gemot. ibid.
A. Gellius quoted. 103
Of Gideon. 90, 91
D. Glôſter's Appeal againſt Alexander, Archbiſhop of York, &c. 11 R. 2. 73
Glanvil vouched. 52
The Advantages of mixed Government in England. 84, 85
Godfrey of Malmsbury. 24
Governments, why inſtituted. 23, 84, 85
Earl Goodwin's Speech againſt the Danes. 30
A remarkable Story of Gonzaga, his Juſtice upon the Governor of Milan under him. 129
Grantz. 111
Grandævus. Introd. lxiv
Goats. 125
Guardian. 98
Guardianſhip of Orphans. XLIV. XLV.
Gymnaſium. Academy. 102, 111
Gymnaſiarchæ. 102

Hæredes neceſſarii. 46
Hamlet, &c. what, and from whence derived. 48
Happineſs, wherein it conſiſts. 7
Hamſochna. 104
Hale, Sir Matthew. 117, 118
Henry VI. an Account of him. Introd. lxiii, & ſeq. 45, 76
Helynandus. 2
Henry III. Clamours againſt him, on what Account. 26, 76
Heregild. (Sadler 224) 30
Henry II. a Character of him. 75
Henry I. Severe in his Puniſhments. 58
Henry IV. a remarkable Subſidy granted to him. 79
Henry V. ibid.
Hermelin, what. 120
Higden, Randolph, corrected. 100
Hidage. 17, 30
Hind. 62
Hopperus, Quotations from him. 7, 8
Horn, Andreas, who. 15
Holkot, Robert, a learned Dominican. 106

Morum Honeſtas. Page 101
Hundreds. (Sadler 90) 47
De Hundredo. Hundredors. 53
Huſtilimentum. Utenſile. 83
Mighty Hunter, what it imports. 20
Of the Hundred Court. 106

K. James I. a Character of him from Rapin. 76
—— A Speech of his. 84
A Character of James II. 77
Jezabel. 38
Ignorance in a Prince, the Conſequence. 2
Ignobiles. 92
Ignorance of the Law cauſes a Contempt thereof. 9
Illegitimate Children, who. XXXIX. XL.
Impotence. 85
Indoles. 1
Inclytus. 10
Inheritance, Title of. 45, 46
Of Inns and Innkeepers. 82
Of the Inns of Court and Chancery. 109, 110
—— A Character of them. ibid. 111
Why Inqueſts are not made by Jurors of 12 Men in other Countries. XXIV. XXIX.
Of the Inquiſition. 43
Of Ingulphus. 31
Of Indentures. 71, 99
Infangthefe. 107
Induciæ. 127
Of K. John. 76
St. John IX. v. 34. explained. 93
Of Jointenants. 127
Irner or Werner, firſt who writ Gloſſes on the Civil Law. 34
Iſſue of the Plea. 36
Juſticiarius Angliæ. 116, 117
Judicium duodecim-virale. 51, 52
Jus. Lex. 4
Juſtitiæ Encomium. 7
Of the Judges LI. Their Commiſſion. 119
Judgment, Villainous. XXVI. 55, 56
Concerning Juries. ib. 38, 51, 52
Of Jurors. ib. 58. How to be choſen and ſworn. XXV.
Lord Chief Juſtice of England, ſome Obſervations upon this Title. 117
Of Delays of Juſtice. LII. LIII.
Juſtinian Law, when, and where firſt profeſs'd and obſerved. XVII. N. 7.
Juſtiniani novi. 15
Of the Emperor Juſtinian. 1, 28
The Juriſconſults. 29
Juſtitia. 46
Scriptum Juſticiariorum. 50
Celeris Juſtitia. 70
Juſtices Itinerant. 107

Of

INDEX.

Of corrupt Judges. Page 121, 122
Lord Chief Juſtice Keeling's Caſe. 122
A King, how he ought to be qualified. 23
King of England, his Power. 26, 75, 76, 83
—— *Prerogative.* 26, 75, 76, 83, 86
Kings, at firſt choſen. XII.
King of England, how He ought to be qualified. 1, 85
Kingdoms compared to Natural Bodies. XIII.
King of England of Himſelf cannot alter the Laws. 16, 22, 23, 83
Why ſome of the Kings of England have had no Delight in their own Laws. 73 *& ſeq.*
Pleading in the King's Bench before K. John, Henry III. *and Ed.* IV. 115, 116
King can do no harm. (*Sadler* 83.) 86
Of the antient Kings of Ægypt. 25
—— *Of Æthiopia.* ibid.
—— *Saba in Arabia Fœlix.* ibid.
The Iſraelites ask a King, the Manner of the King. 18, 19, 21
Title of King not in uſe amongſt the Saxons. 20
Knight's Service. 99
——— ——— *Wardſhip, what, and when in Uſe in England.* 99, 100
Knight. 63

Law, the Definition. 4, 8, 88
Places for Study of the Law. XLVIII, IX.
Laga. 31
Common Law of England, when, and how begun. 33
Lawyers. Sacerdotes. 4, 5
The Law of Nature. 28. *Of the Civil Law.* 28, 29. *Of the Law of England.* ibid. XVI. *Of the Canon Law.* 87
Laths. 47
Caſe of Thomas Earl of Lancaſter. 16, 59
The Laws of England, as well as Human Nature, in Favour of Liberty. 96, 105
The Laws of England, in what Language, and why. XLVIII. 32
Laws of God to be written by the King out of the Copy with the Prieſts. 2
Laws of England, the beſt for England. 29, 128
All Laws are the Law of Nature, Cuſtoms or Statutes. 28, 33
Law of Nature in all Countries is the ſame. ibid. 29
A Mean how to diſtinguiſh between the Civil Laws, and the Laws of England. 33
Why the Laws of England are not taught in Our Univerſities. XLVII. 105
Norman Laws kept in England by W. I. 31
Law in England eſtabliſhed by the Romans. ibid.
Laws of Nature limited in every State. Page 33
The Prince's Pleaſure has the Authority of a Law. XXXIV. 75
The Study of the Common Law requir'd by Stat. of Cambridge. 105
England not govern'd by the Civil Laws of Rome, or any other foreign Laws. 26
Larceny. 104
Human Laws, what. 7
Of the Laws of K. Athelſtane. 70. *Of K. Alfred.* ibid.
Laudboc. (*Sadler* 168) 71
Court of the Trithing or Lath. 106
Of the Uſe of Latin in our Law-Proceedings. 108
Serviens ad Legem. L.
Legales. 51
Lewis XI. *of France, his Adminiſtration.* XXXV.
Of the Legitimation of Children. 87
Lewis I. *King of France.* 129
Lex Terræ. Legem Terræ amittere. 56, 59, 75, 83, 107
Franche Ley. 56
Legem vadiare, facere. ibid. 51
Lex Regia. 75
Lex à ligando. 22
Of Lewis XIV. 43
Leges Apparentes. Loix Appariſans. 66
A Decree of Leo IV. ibid.
Lewis XI. *his Character from De Retz & Mezeray.* 78
Lewis IX. *commonly called St. Lewis, his Character.* 129
Libertinus. 104
Lipſius. 32
Libellus Accuſationis. 54
Lordane. 30
Caſe of Walter Long Eſq; 49
Of Loans, &c. 76
Lytæ. 15
Lycæum. 102

Of Q. Margaret. Introd. lxiii
A Maxim, what. 13
E. Marſhall. 69 *& ſeq.*
Manſer. 91
Of K. Malcolm. XIII. N. 4.
Altum Mare, what the Admiral's Power on it. XXXII. N. e. f.
A Maxim in Law. 9
Matrimonium. 94
Magnates. 111
Law Merchants. 70 *& ſeq.*
Lex Menſia. 94
Mercenlage. 31
Members of Parliament, how they ought to be qualified. 35
Metropolis. 48

INDEX.

Minever. Page 120
Miles. Introd. lxiv.
Case of the Earl of Middlesex. 122
Servitium Militare. 99
Moses, Legislator. 2
Monopolies. 82
Mœchus. 91
The Original of Absolute Monarchy, who. 20
——— *How it first began.* ibid.
Law of Moses, a particular One. 39
Pontique Mouse. 120
Motæ. 121
Mulcts and Expilations. 17
Mulieres Honore Maritorum erigimus. 95
A remarkable Case in Murther. LIII. & N. f.

Natural Children. 87
Case of Naboth. 38
Namd, what. 51, 52
Nimrod. 20
Ninus. 21
Nobilium filii. 110, 111
Normannis. 31, 106
Nothus. 90, 91, 92, 93
Nobility of France oppress the Peasantry. 81
Of the Education of Noblemen's Children in England. XLV.
The Ancient Philosophers were the Nomothetæ *of the Gr.* 6
The Novellæ. 29
Nobility of France, how they are proceeded against criminally. 81
Νοθεία. 90, 93
Nobilitas. 111

Judge's Oath. 118
Coronation Oath. (*Sadler* 23, 193) 76
Oleron, Laws of. 68
Opusculum de Naturâ Legis Naturæ, quoted. IX, XI, XIV, XXXIV, XXXVII.
Guardianship of Orphans. XLIV.
Ora, Monetæ Genus —— summa. 120
Ostiarii. 118
Otheswoth. 56
Case of William de Ou. 43

Pannel. 52
Participes. 127
Of the Parliament of England. 34, 35
Pater-familias. 62
Forum Pœnitentiale. 73
Partus sequitur ventrem. 94
Papinianists. 15
Parisiensis, William. 8
Lex Papia. 26
The Pandect. 28
Talionis Pœna —— reciproca Pœna. Page 40
Vicarium Pœnæ genus ibid.
Patria. 52
Pasquerus, Stephen, a Saying of his. 79
Pannus, quid. 81
Peripatetic. 6
Pervise. (*Sadler* 183) 120
Pertinax Opera. 16
Legibus Peregrinis. 26
Perendinare, quid. 82
Capitium Penulatum. 119
Penkert. 33
Peregrinitatis reus. 26
Petition of Right granted the 3*d Parliament Charles* I. *v. Eachard* II. 60, 62. *Whit. M.* 10. 76
The Philosopher, who. 9
Phavorinus. 39
Alexander Pheræus. 78
Philip of Valois. 79
Litera Pisana, quid. 34
Court of Pipowders. (*Sadler* 308) 70
Pillage. 17
The Great Trial at Pinnendane Heath, between Odo E. of Kent and Lanfranc, Archbishop of Canterbury. (*Sadler* 214) 107
A remarkable Quotation out of Plautus. 102
Plato quoted. 103
Pleading in French. 106
Court of Common Pleas. 116
Politicus Principatus. XIII. 16, 22, 75, 86
Of Power. 86
Cinque Ports. 47
Portgerefe. 49
Probis Hominibus. v. Legales.
Princeps Egens. 85
Quod Principi placet. 17, 75. *explained.* ib.
Proles. 87
What Knowledge of the Laws is necessary for a Prince. VIII. 128
The Office of a good Prince. 7
Proclus. 5
Prolytæ. 15
Litis Productio. 36
Of Sir John Prisot. 98
Notabili Prælato. 114, 115. *v. Burnet Hist. Ref.* I. 129.
Protections. 124
A Sort of Punishment in Scilly. 43
Purveyors. 82, 83
Of Punishments. 41, 43. *King can't alter them.* 41. *For Felony ascertained.* ibid. 58 *Poisoning.* 43. *Punishment, two Cases.* ibid. *Counterfeiters of Money.* ibid. 44
Severity of Punishments used by W. I. *W. Rufus and Henry* I. 43, 44
Pyracies, how triable. 69
Pyrrhus certaminis Gymnici Præceptor. 102

INDEX.

Quintilian. Page 9
The Queſtion. 42, 43
Free Quarter. 79

Of the Rack. 42
Rapes. 47
Cruelty of Rackings. XXI, II.
Raleigh, Sir Walter. 68
Abbot of Ramſey's Caſe. ibid.
Rapin, an Obſervation of his upon Grants and Taxes. 80
Rex. 20
Regis Curia. 101, 106
Reſpectare quid. 126
Reus quis. 41
Ad Recognoſcendum. 51
Rettatus. 58
Recedo. 61
Rex datur propter Regnum. 84
Revelands. 99
Faſhionable princely Recreations, what formerly. 1
The Regal Government. IX.
Record. 54
Reſcribere Principi quid. 85
Rex Vicarius ſummi Regis. ibid.
Relief. 99
Law Reports. 107
Revels. 111
Rhadamanthus. 42
Of Rich. II. 74, 76, 86
Rotuli. 54
Of the Romans. 21, 30, 31 *& ſeq.*
Maſter of the Rolls. 49
Robert K. of France. 129
Roman Colonies in Britain. 31
Rome not ſo ancient as Britain. 33
Of the Roman Senate. 35
Clericus Rotulorum. 49
Of Johannes Romanus. 78. *v. Burnet Hiſt. Ref.* III. 6

Sacerdotes. 4
Saltus. 61
Salt, Tax on it in France. 79
Johannes Sarisburienſis affirms, that the Canon Law was prohibited in England. 74
Sacramentales Homines. 51
Sabots. 79
Sagittarii. 80
Saca. 99, 118. *Soca.* ibid.
Maſſurius Sabinus. 103
Scriba. 117
Scotland tributary to Ed. I. 24 *& ſeq.*
Scortum. Page 91
The firſt School of the Civil Law, where. 34
Scotia, Ducatus. 24
Scirman, Scirigman, Scirgereſa. 49
L. C. J. Scrogg's Caſe. 122
Of Sealing with Wax. 72
Sealing, &c. 71, 72, 106
The High Sea. XXXII. N. e. (18.)
Secta quid. 37
Seneca, Quotations from him. 6, 16
A Character of the Great Mr. Selden. 29
The narrow Seas. 68, 69
Servile Conſortium. 94
Grand Serjeantie. 99
Servitium militare. ibid.
Serviens ad Legem. L.
The Serjeant's Feaſt at their Creation. 114
—— *Their Preſents of Gold.* ibid.
Sheriff, &c. XXIV. 36, 49
Signum, Sigillum. 71, 72
Synagoga. 18
Michel Sinoth. 35
Sibula. 79
An Account of Sin and Slavery. 96
Caſe of Siſamnes. 121
Skute, what. 64, 110, 114
Sotulares. 79
Soccage-Tenure. 99
Sols, a French Coin. 125
Solon, a Saying of his. 16
—— *A Law of his.* 103
Spurius. 90, 91
Caſe of the Earl of Strafford. 59
Of the Students of ths Law. XLIX.
Stragulata Veſtis. 119, 120
How Statutes are made in England. 34, 35
K. Stephen's Public Edict againſt the firſt Laws of Italy. 74
Law of the Staple. 70
Staple. 71
Stat. 36 Ed. 3. 106, 107
The Stoics. 6
Stat. de Tallagio non concedendo. 17
Of the Statute Law. 28
Military Tenures, &c. taken away by Stat. 12 C. 2. c. 24. 99
Strenuitas. 101
Court of the Steward and Marſhal of the King's Houſe. 102
Statutes when they begun to be drawn up and enrolled in Engliſh. 107
Of Metius Suffetius. 42
D. of Suffolk's Caſe. 16
Subſidia. 30
Caſe of Suſanna. 39
Swiſs-Guards, when firſt inſtituted. 8
Syria. 21
A Decree of Sylveſter. II. 66

INDEX.

Tallagia. Page 17, 30
Talionis Lex. 39, 40
Tainlands. 99
Taxa. 17
First Land-Tax in England. 30
Talio Pythagorica. 39, 40
—— *Similitudinis.* ibid.
Tales de Circumstantibus. 52, 55
A Law of the XII *Tables against corrupt Judges.* 123
Testes. 37, 57
Of Teucer in Homer and Sophocles. 92
Tenures, when, and by what Law changed. 97
Team. 99
Tenants in Common. Jointenants. 127
Thani Consacramentales. 51
Manifest Theft, what, and how punished. XLVI.
Thumbkins. 43
Of the Theocracy of the Jews. 18
Case of Sir William Thorpe. 122
Title of Inheritance. 45, 46
Tithings. 106 & *alibi.*
Titus, his Character. 6
Of Timoleon. 78
Of Tiberius. ibid.
Court of Freeborough or Tithing. 106
Toll. 99
Torture. 41, 42
Towton, Battle of. Introd. lxiii.
Torquendi usum ignorant Angli. 41, 43
Torture ineffectual for the Purpose. 44
De Trithingis. 106
Trunk, what. 22
Trial by Witnesses. 36, 106
—— *By Jury.* ibid. 88. & *seq.*
—— *By Ordeal, &c.* (*Sadler* 183, 4) 41, 66
Witnesses in Trial without a Jury. 37
Concerning Trade. 70 & *seq.* 124
Concerning Tribonian. 28
Cruelties of Trials by the Civil Law. XXI. II. & *Not.* ibid.
Extraordinary Trial, what. 56
The Excellency of Trials by Juries. 38, 57
Zeal of the English Nation to Trade. 70
Of Tristan, Lewis XI.*'s Great Favourite.* 78
Tunnage and Poundage first Grant for Life, and a leading One. 79, 80
Tungerese. Page 49
Tutor. 98
Of Tyranny and Tyrants. 27, 84, 85

Legis Vadiatio. 51, 56
Valecti. 63
Vacation. 111
Of the L. C. J. Vaughan. 122
Verdict. 51, 52
Venire facias. 50
Vegetius quoted. 128
Mar. Velserus. 32
State of Venice. 33
Vicecomes. 48, 49
Visne, Vicinetum. 36, 51, 52, 54
Vills. 47
Vicus. 48
Villenage. 104
Ulpian Domitius. 4
Of the Universities. XLVII, VIII.
Vouchings to Warranty. 127
Use a second Nature. 10
The Case of Usk. 122. *v. Tyrrell* III. 932.

Wake, Sir Isaac. 121
Wapentake, what. 46, 47
Of Wardships. XLIV. 98, 100
Wardship of Minors given to the Adgnati. 98
Soccage Wardship. 99
Purgations by Water. 41, 66
Low Water Mark. 68
Weregeld. (*Sadler* 65) 40
West Saxonlage. 31
Werner. v. Irner.
Whites, a Coin. v. Blanks.
Witnesses to Charters. 71 & *seq.*
—— *Solemnity of Witnesses.* ibid. 72
William I. 31, 91, 92, 105, 106
Wines, the Tax upon them in France. 80
Wike. 48
Wolves in England, how destroyed. 62
Women, their Condition in England. 95 & *seq.*
Of Cardinal Wolsey. 75
Writs Original and Judicial. 50, 108, 110
Of the old **Writ,** ad Capiendum impugnatores jurium Regis. 75

Yeoman. 63
Of the Year Books. 108

FINIS.

FORTESCUE

DE

Laudibus Legum Angliæ.

Præmittuntur Præfatio primi *Editoris*, &, Teſtimonia *Balei*, *Pitſei* & *Du Freſne*.

Nihil aut æquius aut tutius, quam ut regnet Rex ſecundum Leges moreſq; veteres. Liber eſt Lectu dignus Scriptus ante duo, ni fallor, ſæcula de Laudibus Legum Angliæ. Grot. Epiſt. Pars I. Epiſt. 1431. Dat. 27 Oct. 1640.

LONDINI:

Typis E. & R. Nutt, & R. Gosling, (Edw. Sayer Arm. Aſſignat.) Proſtant venales apud **Robertum Gosling**, ad inſigne Coronæ & Mitræ in vico vulgò vocato Fleet-Street.

MDCCXXXVII.

INDEX.

Tallagia. Page 17, 30
Talionis Lex. 39, 40
Tainlands. 99
Taxa. 17
First Land-Tax in England. 30
Talio Pythagorica. 39, 40
—— *Similitudinis.* ibid.
Tales de Circumstantibus. 52, 55
A Law of the XII *Tables against corrupt Judges.* 123
Testes. 37, 57
Of Teucer in Homer and Sophocles. 92
Tenures, when, and by what Law changed. 97
Team. 99
Tenants in Common. Jointenants. 127
Thani Consacramentales. 51
Manifest Theft, what, and how punished. XLVI.
Thumbkins. 43
Of the Theocracy of the Jews. 18
Case of Sir William Thorpe. 122
Title of Inheritance. 45, 46
Tithings. 106 & *alibi.*
Titus, his Character. 6
Of Timoleon. 78
Of Tiberius. ibid.
Court of Freeborough or Tithing. 106
Toll. 99
Torture. 41, 42
Towton, Battle of. Introd. lxiii.
Torquendi usum ignorant Angli. 41, 43
Torture ineffectual for the Purpose. 44
De Trithingis. 106
Trunk, what. 22
Trial by Witnesses. 36, 106
—— *By Jury.* ibid. 88. & *seq.*
—— *By Ordeal, &c.* (*Sadler* 183, 4) 41, 66
Witnesses in Trial without a Jury. 37
Concerning Trade. 70 & *seq.* 124
Concerning Tribonian. 28
Cruelties of Trials by the Civil Law. XXI. II. & *Not.* ibid.
Extraordinary Trial, what. 56
The Excellency of Trials by Juries. 38, 57
Zeal of the English Nation to Trade. 70
Of Tristan, Lewis XI.*'s Great Favourite.* 78
Tunnage and Poundage first Grant for Life, and a leading One. 79, 80
Tungerese. Page 49
Tutor. 98
Of Tyranny and Tyrants. 27, 84, 85

Legis Vadiatio. 51, 56
Valecti. 63
Vacation. 111
Of the L. C. J. Vaughan. 122
Verdict. 51, 52
Venire facias. 50
Vegetius quoted. 128
Mar. Velserus. 32
State of Venice. 33
Vicecomes. 48, 49
Visne, Vicinetum. 36, 51, 52, 54
Vills. 47
Vicus. 48
Villenage. 104
Ulpian Domitius. 4
Of the Universities. XLVII, VIII.
Vouchings to Warranty. 127
Use a second Nature. 10
The Case of Usk. 122. *v. Tyrrel* III. 932.

Wake, Sir Isaac. 121
Wapentake, what. 46, 47
Of Wardships. XLIV. 98, 100
Wardship of Minors given to the Adgnati. 98
Soccage Wardship. 99
Purgations by Water. 41, 66
Low Water Mark. 68
Weregeld. (*Sadler* 65) 40
West Saxonlage. 31
Werner. v. Irner.
Whites, a Coin. v. Blanks.
Witnesses to Charters. 71 & *seq.*
—— *Solemnity of Witnesses.* ibid. 72
William I. 31, 91, 92, 105, 106
Wines, the Tax upon them in France. 80
Wike. 48
Wolves in England, how destroyed. 62
Women, their Condition in England. 95 & *seq.*
Of Cardinal Wolsey. 75
Writs Original and Judicial. 50, 108, 110
Of the old **Writ,** ad Capiendum impugnatores jurium Regis. 75

Yeoman. 63
Of the Year Books. 108



FINIS.

FORTESCUE

DE

Laudibus Legum Angliæ.

Præmittuntur Præfatio primi *Editoris*, &, Teſtimonia *Balei*, *Pitſei* & *Du Freſne*.

Nihil aut æquius aut tutius, quam ut regnet Rex ſecundum Leges moreſq; veteres. Liber eſt Lectu dignus Scriptus ante duo, ni fallor, ſæcula de Laudibus Legum Angliæ. Grot. Epiſt. Pars I. Epiſt. 1431. Dat. 27 Oct. 1640.

LONDINI:

Typis E. & R. Nutt, & R. Gosling, (Edw. Sayer Arm. Aſſignat.) Proſtant venales apud Robertum Gosling, ad inſigne Coronæ & Mitræ in vico vulgò vocato Fleet-Street.

MDCCXXXVII.



PIO LECTORI.

ISTIUS non minùs pii, quàm eruditi opuſculi exemplar nactus, quum Antiquitatem venerandam unà cum eruditione ac pietate conjunxerim, non potui, optime lector, aut Patriæ tam ingratus, aut Antiquitatis tam inofficioſus cultor eſſe, ut te illius lectione diutiùs fraudarem. Continet enim in ſe (ut cætera taceam) politicarum & civilium noſtræ Angliæ legum, quibus præclara & florentiſſima hæc reſpublica ſub illuſtriſſimo & nunquam ſatis laudato Principe noſtro Rege Henrico ſexto, ejuſque progenitoribus regibus Angliæ, hactenus feliciſſimè fuerit erecta, inſtituta & gubernata, doctiſſimum encomion. Unde eaſdem noſtras Leges non ſolùm Romanorum Cæſarum, ſed & omnium aliarum nationum conſtitutiones, multis paraſangis prudentiâ, juſtitiâ & equitate præcellere, facilè perſpicias. Eme ergo, lege, & fruere, ac labores noſtros boni conſule.

Vale.

(a) *Baleus de Scriptoribus Britanniæ, Fo. Baſileæ apud Joannem Oporinum* 1557. *Centuria Octava. Foskewe Cancellarius* XXXVI.

Foskewe, alias Forteskewe, ut Recordus habet, juris peritiſſimus, primarius judex, & Anglici regni Cancellarius ſummus, inter eruditos in noſtro catalogo locum ex doctis Laboribus honorificum petit. Quem ſi illi negaremus, ingrati meritò appellaremur. Excoluit tum juvenis, tum etiam Senex, Virtutem: literaſque politas, ut qui maximè, ſemper amavit. Inter forenſes Londini clariſſimus juris civilis interpres admittebatur: ac Nobiliores in Scholâ juvenes peculiares à regibus conditas leges perdocuit; indè a gradu ad gradum aſcendit, donec eſſet ſupremus Angliæ Cancellarius, quod munus in reipublicæ adminiſtratione & Authoritate & dignitate in eo regno longè maximum eſt. In quo officio tam candidè ſe geſſit, ut juſtitiæ ac prudentiæ laus illi tribueretur ſumma. Quicquid dignitate valebat aut gratia apud Principem, id juvandæ reipublicæ totum impendiſſe fertur; in hoc Zelo pietatis ſcripſit ſub Henrico ſexto differentiam inter leges provinciales ac civiles, vel

De diſcrimine legum, Lib. 1. *Sæviente dudum in regno Angliæ.*
De laudibus legum, Lib. 1.
De politicâ Adminiſtratione, Lib. 1.
De vigore legis Naturalis, Lib. 1.

aliaque nonnulla. Tandem fuit exul ab Angliâ, & colligo illum claruiſſe circa tempus civilis belli, quo Edwardiani cum Henricianis,

(a) *Collier. Fuller's* Ch. Hiſt. L. IX. p. 97.

Anno Domini 1460. *de imperii ſummâ pertinaciſſimè certabant: Exilii verò cauſas non legi.*

(*b*) *Pitſeus de rebus Anglicis*, 4to, *Paris* 1619. *Ætas decima quinta.*

1460. 850. *Fortiſcutus, vulgò Foskew nonnulli vocant, honeſto loco in Angliâ natus, & à teneris annis in ſtudiis Virtutis & bonarum literarum optimè educatus. Poſtquam juvenis Latini Sermonis elegantiam acquiſiviſſet, jure civili & legibus Angliæ municipalibus ſtrenuam operam dedit, & accedente ad magnum ingenium labore atque induſtriâ, juriconſultus evaſit ſuo ſæculo cum primis meritò conferendus. Londini igitur jus tum civile, tum municipale publicè docuit, habuitque auditores nobiliſſimos juvenes quam plurimos. Deinde inter judices primarios relatus eſt, & gradatim per officia honorata & dignitates in republicâ aſcendens, tandem factus eſt ſummus Angliæ Cancellarius, quod munus eſt Supremæ poſt Regem in Adminiſtratione regni auctoritatis. Et hæc pleraque ſcribit* (*c*) *Robertus Recordus. Porrò in hoc Summo Officio tam piè, prudenterque ſe geſſit, ut omnem illam, quam conſequi poterat auctoritatem, ad reipublicæ referret utilitatem. Ferunt tamen eum, furentibus tunc in Angliâ bellis civilibus, exilio mulctatum. Quod non difficulter credo. Nam inter arma ſilent leges. Et ubi vi res geritur, quis, obſecro, juſtitiæ locus? Scripſit tamen, non obſtantibus tumultibus civilibus, differentiam legum provincialium & civilium, ſub hoc titulo,*

De diſcrimine legum, Librum unum, Sæviente dudum in regno Angliæ;

De vigore legis Naturalis, Librum unum;

De politica Adminiſtratione, Librum unum;

De laudibus legum Angliæ, Librum unum;

Et alia ſimilia. Vixit Anno Domini 1460. *tumultuante ſub Henrico ſexto Angliæ regno.*

Johannes Forteſcue, Capitalis Juſtitiarius & Cancellarius Angl. vix. An. 1460. *ſub Henrico* VI. *Du Freſne's Index p.* 135.

(*b*) *Collier*'s Dict. and Supplement. *Fuller*'s Ch. Hiſt. L. IX. p. 67. *Fuller*'s Worthies, Tit. Hantſhire. *Wood*'s Athenæ, V. 1. 405. (*c*) Pitſeus, Ætas decima ſexta, A. D. 1552. 990. Baleus, Centuria Octava. Robertus Recordus XCIII.

INTRO-

INTRODUCTIO.

SÆVIENTE dudum in regno Angliæ nefandiſſimâ Rabie illâ, quâ piiſſimus ibidem Rex Henricus Sextus, *cum* Margaretâ *Reginâ conſorte ſuâ, Filiâ Regis* Jeruſalem & Siciliæ, *ac eorum Unigenito* Edwardo *Principe* Walliæ, *inde propulſi ſunt, ſub quâ & demum Rex ipſe Henricus a ſubditis ſuis deprehenſus Carceris diutinum paſſus eſt Horrorem, dum Regina ipſa cum ſobole, Patriâ ſic extorris, in Ducatu* Berren' *in prædicti Regis Jeruſalem Dominio morabantur.* Princeps *ille, mox ut factus eſt adultus, militari totum ſe contulit Diſciplinæ, & ſæpe ferocibus & quaſi indomitis inſedens Caballis, eos Calcaribus urgens, quandóque Lanceâ, quandòque Mucrone, aliis quoque Inſtrumentis bellicis, Sodales ſuos, Juvenes ſibi ſervientes, Bellantium more, invadere, ferireque, juxta Martis Gymnaſii Rudimenta, delectabatur. Quod cernens (a) Miles quidam (b) grandævus, prædicti Regis Angliæ Cancellarius, qui etiam ibidem ſub hac Clade exulabat, Principem ſic affatur.*

CAP. I.

GAudeo verò, *Sereniſſime Princeps*, ſuper nobiliſſimâ (c) Indole Tuâ, videns quantâ (d) Aviditate militares Tu amplecteris Actus; convenit namque Tibi taliter delectari, nedum quia Miles es, ſed ampliùs quia Rex futurus es. *Regis nempe officium pugnare eſt Bella Populi ſui, & eos rectiſſimè judicare*, ut primo Regum Capitul. VIII. clariſſimè Tu doceris. Quare ut Armorum utinam & Legum Studiis ſimili Zelo te deditum contemplarer, cum *ut Armis Bella, ita Legibus Judicia peragantur.* Quod *Juſtinianus Auguſtus*, æquiſſimâ librans Mente, in Initio Prohemii Libri ſui Inſtitutionum, ait " *Imperatoriam Majeſtatem non ſolum Armis decoratam, ſed &* " *Legibus oportet eſſe armatam*," ut utrumque Tempus Bellorum & Pacis rectè poſſit gubernare. Tamen ut ad Legum Studia fervidè tu (e) anheles, maximus Legiſlator ille (f) *Moyſes*, olim Synagogæ Dux, multo fortiùs Cæſare Te invitat, dum Regibus Iſrael Divinâ Autoritate ipſe præcipiat eorum Leges legere omnibus Diebus Vitæ ſuæ, ſic dicens: " *Poſtquam* " *ſederit Rex in Solio Regni ſui, deſcribet ſibi Deuteronomii Leges in Volumine,* " *accipiens Exemplar a Sacerdotibus Leviticæ Tribus & habebit ſecum, leget-* " *que illud omnibus Diebus vitæ ſuæ, ut diſcat timere Dominum Deum ſuum,* " *& cuſtodire verba & Ceremonias ejus, quæ in Lege Scripta ſunt*," Deuteron. capit. decimo ſeptimo. Quod exponens *Helynandus* dicit, " *Princeps ergo* " *non debet Juris ignarus eſſe, nec prætextu Militiæ Legem permittitur igno-* " *rare.*" Et poſt pauca, a Sacerdotibus Leviticæ Tribûs aſſumere jubetur Exemplar Legis, id eſt a viris Catholicis & literatis; Hæc ille: Liber quippe Deut. eſt Liber Legum, quibus Reges Iſrael ſubditum ſibi Populum regere tenebantur. Hunc Librum legere jubet Moſes Reges, ut diſcant timere Deum, & cuſtodire Mandata ejus, quæ Lege ſcripta ſunt. *Ecce timere Deum Effectus eſt Legis*, quem non conſequi valet Homo, niſi priùs ſciat Voluntatem Dei, quæ in Lege ſcripta eſt. Nam Principium omnis Famulatûs, eſt ſcire voluntatem Domini cui ſervitur. Legis tamen lator Moſes

(a) Tranſl. Introd. Note f. (b) Ib. e. (c) Cap. I. a. (d) Cap. I. b.
(e) Cap. I. f. (f) Cap. I. g.

primo

primo in hoc Edicto Effectum Legis, videlicet, Timorem Dei commemorat: deinde ad Cuſtodiam Cauſæ ejus, videlicet, Mandatorum Dei ipſe invitat. Nam Effectus prior eſt quàm Cauſa in animo Exhortantis. Sed quis eſt Timor iſte, quem promittunt Leges Obſervatoribus ſuis? verè non eſt Timor ille, de quo ſcribitur: Quòd perfecta Charitas foràs mittit Timorem. Timor tamen ille, licèt ſervilis, ſæpe ad legendum Leges Reges concitat, ſed non eſt ipſe Proles Legis. Timor verò, de quo hic loquitur Moſes, quem & pariunt Leges, eſt ille de quo dicit Propheta: "*Timor Domini* "*ſanctus permanet in Seculum ſeculi*;" Hic filialis eſt & non novit pœnam, ut ille qui per Charitatem expellitur. Nam iſte a Legibus proficiſcitur, quæ docent facere voluntatem Dei, quo ipſe Pœnam non meretur. Sed Gloria Domini eſt ſuper metuentes eum, quos & ipſe glorificat. Timor autem iſte timor ille eſt, de quo *Job*, poſtquam multifariè Sapientiam inveſtigat, ſic ait: "*Ecce Timor Domini, ipſa eſt Sapientia, & recedere a malo Intelligentia.*" Job, ca. 28. Recedere a Malo, quod Intelligentia Timoris Dei eſt, Leges docent, quo & Timorem hunc ipſæ parturiunt.

CAP. II.

HÆC ut audivit *Princeps* (*) erecto in Senem Vultu, ſic loquutus eſt. Scio, Cancellarie, quod Liber Deut. quem Tu commemoras, ſacræ Scripturæ Volumen eſt; Leges quoque & Ceremoniæ in eo conſcriptæ etiam ſacræ ſunt, a Domino editæ, & per Moſen promulgatæ: quare eas legere ſanctæ Contemplationis Dulcedo eſt. Sed Lex, ad cujus Scientiam me invitas, humana eſt, ab Hominibus edita, & tractans terrena, quo, licet Moſes ad Deuter. Lecturam Reges Iſrael aſtrinxerit, eum per hoc Reges alios ad conſimiliter faciendum in ſuis Legibus concitâſſe, omnem effugit Rationem, cum utriuſque Lecturæ non ſit eadem cauſa.

CAP. III.

AT Cancellarius, ſcio (inquit) per hæc quæ jam dicis, Princeps clariſſime, quantâ advertentiâ Exhortationis meæ Tu ponderas Qualitatem, quo me non infimè concitas ſuper Inceptis nedum clariùs, ſed & profundiùs quodammodo Tecum diſceptare: Scire igitur Te volo, quòd non ſolùm Deut. Leges, ſed & omnes Leges humanæ ſacræ ſunt, quo Lex ſub his verbis definitur: Lex eſt Sanctio ſancta, jubens honeſta, & prohibens contraria: Sanctum etenim eſſe oportet, quod eſſe ſanctum definitum eſt. Jus etiam deſcribi perhibetur, quod illud (*a*) Ars eſt boni & æqui, cujus merito quis nos (*b*) Sacerdotes appellat. *Sacerdos* enim, quaſi ſacra dans, vel ſacra docens, per Etymologium dicitur, quia ut dicunt, Jura Leges ſacræ ſunt, quo eas miniſtrantes & docentes, Sacerdotes appellantur. Adeò etiam ſunt omnes Leges editæ, quæ ab Homine promulgantur. Nam cum dicat Apoſtolus, quòd omnis Poteſtas a Domino Deo eſt, Leges ab Homine conditæ, qui ad Hoc a Domino recipit Poteſtatem, etiam a Deo conſtituuntur, dicente (*c*) *Auctore Cauſarum*: "*Quicquid facit* "*Cauſa ſecunda, facit & Cauſa prima, altiori & nobiliori modo.*" Quare *Joſophat*, Rex *Juda*, ait Judicibus ſuis, "*Judicia, quæ vos profertis, Judicia Dei ſunt*," ſecundo Paralipo. XIX. Capitul. Ex quibus erudiris, quòd Leges, licèt humanas, addiſcere, eſt addiſcere Leges ſacras & Editiones Dei, quo earum Studium non vacat a Dulcedine Conſolationis Sanctæ. Nec tamen, ut tu conjicis, Dulcedo hujuſmodi cauſa fuit, cur Moſes Reges Iſrael Deut. legere præceperat. Nam Cauſa hæc non plus Reges quàm Plebeios ad ejus Lecturam provocat, nec plus Deut. Librum, quàm alios Pentateuchi Libros legere pulſat Cauſa iſta, cum non minùs Libri illi, quàm Deut. ſacris abundant Cariſmatibus, in quibus meditari per-ſanctum

* Tranſl. Cap. II. †. (*a*) Cap. III. b. (*b*) Cap. III. d. (*c*) Cap. III. e.

eſt. Quare non aliam fuiſſe Cauſam mandati hujus, quàm quia in Deut. plùs quàm in aliis Libris veteris Teſtamenti, Leges inſeruntur, quibus Rex Iſrael Populum Regere obnoxius eſt, ejuſdem Mandati Circumſtantiæ manifeſtè nos informant. Quo, & Te, Princeps, eadem Cauſa non minùs quàm Reges Iſrael exhortatur, ut Legum, quibus Populum in futurum reges, Tu ſis ſolers Indagator. Nam, quòd Regi Iſrael dictum eſt, omni Regi Populi videntis Deum, typicè dictum fuiſſe Intelligendum eſt. An tunc non convenienter utiliterque propoſui Tibi Mandatum Regibus Iſrael latum, de eorum Lege addiſcendâ? Dum nedum ejus Exemplum, ſed & ejus Auctoritas figuralis, Te erudivit & obligavit ad conſimiliter faciendum de Legibus Regni, quod annuente Domino hæreditaturus es.

CAP. IV.

NON ſolùm ut Deum timeas, quo & ſapiens eris, *Princeps* (*a*) *colendiſſime*, vocant te Leges, cum Prophetâ dicente "*Venite Filii* "*audite me, Timorem Domini docebo vos:*" ſed etiam ut Felicitatem, Beatitudinemque (prout in hac Vitâ nanciſci poteris) adipiſcaris, ipſæ Leges ad earum Diſciplinatum Te invitant. Philoſophi namque omnes, qui de Felicitate tam variè diſputabant, in hoc uno convenerunt, viz. quòd Felicitas ſive Beatitudo Finis eſt omnis humani Appetitûs, quare & ipſam ſummum Bonum appellant, *Peripatetici* tamen conſtituebant eam in Virtute: *Stoici* in honeſto: & *Epicuri* in Voluptate. Sed quia *Stoici* Honeſtum definiebant eſſe quod benè fit & laudabiliter ex Virtute, & *Epicuri* aſſerebant nihil eſſe voluptuoſum ſine Virtute, omnes ſectæ illæ, ut dicit *Leonardus Aretinus* Yſagogico moralis Diſciplinæ, in hoc concordaverunt, quòd ſola Virtus eſt, quæ Felicitatem operatur. Quo & Philoſophus (in 7 Polit. Felicitatem definiens) dicit, quòd ipſa eſt perfectus uſus Virtutum. His jam præſuppoſitis, conſiderare Te volo etiam ea quæ ſequentur. Leges humanæ non aliud ſunt quàm Regulæ, quibus perfectè Juſtitia edocetur. Juſtitia verò, quam Leges revelant, non eſt illa, quæ commutativa vel diſtributativa vocatur, ſeu alia quævis particularis virtus, ſed eſt Virtus perfecta, quæ Juſtitiæ legalis Nomine deſignatur. Quam Leonardus prædictus ideo dicit eſſe perfectam, quia omne Vitium ipſa eliminat, & omnem virtutem ipſa docet: quo & omnis Virtus ipſa meritò nuncupatur. De quâ Homerus dicit, ſimiliter & Philoſophus quinto Ethicorum, Quòd ipſa eſt præclariſſima Virtutum, & nec Lucifer, nec Heſperus, ut illa, eſt admirabilis. Juſtitia verò hæc ſubjectum eſt omnis regalis Curæ, quo ſine illâ Rex juſtè non judicat, nec rectè pugnare poteſt. Illâ verò adeptâ perfectèque ſervatâ, æquiſſimè peragitur omne Officium Regis. Unde cum perfectus uſus Virtutum ſit Felicitas, & Juſtitia humana, quæ non niſi per Legem perfecte nanciſcitur aut docetur, nedum ſit Virtutum Effectus, ſed & omnis Virtus: ſequitur, quòd Juſtitiâ fruens felix per Legem eſt, quo & per eam ipſe ſit beatus, cum idem ſit Beatitudo & Felicitas in hac fugaci vitâ, cujus & per Juſtitiam ipſe ſummum habet Bonum. Tamen non niſi per Gratiam Lex poterit iſta operari, neque Legem aut Virtutem ſine Gratiâ Tu addiſcere poteris, vel appetere. Cum, ut dicit *Pariſ.* in Libro ſuo de *Cur Deus Homo*, Virtus Hominis appetitiva interior per peccatum Originale ita vitiata eſt, ut ſibi Vitiorum ſuavia, & Virtutum aſpera Opera ſapiant. Quare, quod aliqui ad Amorem, Sectationemque Virtutis ſe conferunt, divinæ Bonitatis Beneficium eſt, & non humanæ Virtutis. Num tunc Leges, quæ, prævenientе & comitante Gratiâ, omnia Præmiſſa operantur, (*b*) toto Conamine addiſcendæ ſunt? Dum Felicitatem, quæ ſecundum Philoſophos eſt hic Finis & Complementum humani Deſiderii, earum Apprehenſor obtinebit, quo & beatus ille erit in hac Vitâ, ejus poſſidens ſummum Bonum. Verè, etſi non hæc Te moveant, qui Regnum recturus es, movebunt Te & acetabunt ad Diſciplinatum Legis Pro-

(*a*) Tranſl. Cap. IV. b. (*b*) Ibid. m.

phetæ verba dicentis: " *Erudimini qui judicatis Terram:*" non enim ad Eruditionem Artis factivæ, aut mechanicæ, hic movet Propheta: Cum non dicat, Erudimini, qui colitis Terram, nec ad Eruditionem ſcientiæ tantùm Theoricæ, quamvis opportuna fuerit Incolis Terræ, quia generaliter non dicit, Erudimini qui inhabitatis Terram, ſed ſolùm ad Diſciplinam Legis, quâ Judicia redduntur, Reges invitat Propheta in his Verbis, cum ſpecialiter ipſe dicat, " *Erudimini qui judicatis Terram.*" Et ſequitur, " *Ne quando iraſcatur Dominus, & pereatis de viâ juſtâ.*" Nec ſolùm Legibus, quibus Juſtitiam conſequeris, (Fili Regis) imbui Te jubet ſacra Scriptura, ſed & ipſam Juſtitiam diligere Tibi alibi præcipit, cum dicat, " *Diligite Juſtitiam qui judicatis Terram.*" Sapientiæ Capitulo primo.

CAP. V.

SED quomodo Juſtitiam diligere poteris, ſi non primò Legum Scientiam, quibus ipſa cognoſcatur, utcunque apprehenderis? Dicit namque Philoſophus, quòd Nihil amatum niſi cognitum. Quare *Fabius* Orator ait, " *Quòd felices eſſent Artes, ſi de illis ſoli Artifices judicarent.*" Ignotum verò non ſolùm non amari, ſed & ſperni ſolet. Quo Poeta quidam ſic ait,

Omnia quæ neſcit, dicit ſpernenda Colonus.

Et non Coloni ſolùm Vox hæc eſt, ſed & Doctorum peritiſſimorum quoque Virorum. Nam ſi ad Philoſophum Naturalem, qui in Mathemat. nunquam ſtudet, Metaphyſicus dicat, Quòd Scientia ſua conſiderat Res ſeparatas ab omni Materiâ & motu ſecundum Eſſe & ſeundum Rationem: vel Mathematicus dicat, quòd ſua Scientia conſiderat Res conjunctas Materiæ & motui, ſecundum Eſſe, ſed ſeparatas ſecundum Rationem: ambos hos, licèt Philoſophos, Philoſophus ille Naturalis, qui nunquam novit Res aliquas ſeparatas a Materiâ & Motu, Eſſentiâ vel Ratione, ſpernet, eorumque Scientias, licèt ſuâ Scientiâ Nobiliores, ipſe deridebit, non aliâ ductus Cauſâ, niſi quia eorum Scientias ipſe penitùs ignorat. Sic & Tu, Princeps, Legis Angliæ peritum miraberis, ſi dicat, quòd Frater Fratri ſibi nequaquam uterino non ſuccedet in Hæreditate paternâ, ſed potiùs Hæreditas illa Sorori integri Sanguinis ſui deſcendet, aut Capitali Domino Feodi accidet ut (*a*) Eſcaeta ſua: Cum Cauſam Legis hujus Tu ignores, in Lege tamen Angliæ doctum hujus Caſus Difficultas nullatenus perturbat. Quare & vulgariter dicitur: Quòd *Ars non habet Inimicum niſi ignorantem.*

Sed abſit a te, *Fili Regis*, ut inimiceris Legibus Regni, quo Tu ſucceſſurus es, vel ut eas ſpernas, quum Juſtitiam diligere prædicta Sapientiæ Lectio Te erudiat. Iterum igitur atque iterum, *Princeps* (*b*) *inclytiſſime*, Te adjuro, ut Leges Regni Patris Tui, cui ſucceſſurus es (*c*), addiſcas; nedum ut Inconvenientias has Tu evites: Sed quia Mens humana, quæ naturaliter Bonum appetit, & Nihil poteſt appetere, niſi ſub Ratione Boni, mox ut per Doctrinam Bonum apprehenderit, gaudet & illud amat, ac quanto deinceps illud plùs recordatur, tanto ampliùs delectatur in eodem, quo doceris, quòd ſi Leges prædictas, quas jam ignoras, intellexeris per Doctrinam, cum optimæ illæ ſint, amabis eas. Et quanto plùs eaſdem mente pertractaveris, delectabiliùs Tu fruêris.

Nam omne, quod amatur, uſu trahit Amatorem ſuum in Naturam ejus. Unde, ut dicit Philoſophus, *uſus altera fit Natura.* Sic Ramunculus Pyri Stipiti Pomi inſertus, poſtquam coaluerit, ita Pomum trahit in Naturam Pyri, ut ambæ deinceps meritò Pyrus appellentur, Fructuſque producant Pyri. Sic & uſitata Virtus Habitum generat, ut utens eâ deinde a Virtute illâ denominetur, quo Modeſtiâ præditus, uſu Modeſtus nominatur, Continentiâ continens, & Sapientiâ ſapiens. Quare & Tu, Princeps, poſtquam

(*a*) Tranſl. Cap. V. f. (*b*) Ibid. g. (*c*) Ibid. h.

Juſtitiâ delectabiliter functus fueris, Habitumque Legis indutus fueris, meritò denominaberis Juſtus, cujus gratiâ Tibi dicetur, *Dilexiſti Juſtitiam, quo & odiſti Iniquitatem, propterea unxit Te Dominus Deus Tuus Oleo Lætitiæ præ conſortibus Tuis Regibus Terræ.*

CAP. VI.

NOnne tunc, *Princeps ſereniſſime*, hæc Te ſatis concitant ad Legis Rudimenta? cum per ea Juſtitiam induere valeas: quo & appellaberis Juſtus, Ignorantiæ quoque Legis evitare poteris Ignominiam: ac per Legem Felicitate fruens, beatus eſſe poteris in hac Vitâ, & demum filiali Timore indutus, qui Dei Sapientia eſt, Charitatem, quæ Amor in Deum eſt, imperturbatus conſequêris, quâ Deo adhærens per Apoſtoli Sententiam " *Fies unus Spiritus cum eo.*"

Sed quia iſta, ſine Gratiâ, Lex operari nequit, Tibi illam ſuper omnia implorare neceſſe eſt, Legis quoque Divinæ & Sanctarum ſcripturarum indagare Scientiam.

Cum dicat Scriptura ſacra, quòd " *Vani ſunt omnes, in quibus non ſubeſt* " *Scientia Dei.*" Sapientia, cap. XIII.

His igitur, *Princeps*, dum Adoleſcens es, & Anima tua velut Tabula raſa, depinge eam, ne in futurum ipſa Figuris minoris Frugi delectabiliùs depingatur.

Quia etiam, (ut Sapiens quidam ait,)
Quod nova Teſta capit, inveterata ſapit.

Quis Artifex tam Negligens profectûs ſuæ Prolis eſt, ut non eam, dum pubeſcit, Artibus inſtruat, quibus poſtea vitæ Solatia nanciſcatur? Sic lignarius Faber ſecare Dolabrâ, Ferrarius ferire Malleo, Filium inſtruit: & quem in Spiritualibus miniſtrare cupit, Literis imbui facit: Sic & Principi Filium ſuum, qui poſt eum Populum regulabit, Legibus inſtrui dum minor eſt, convenit. Qualiter ſi fecerint Rectores Orbis, Mundus iſte ampliori, quàm jam eſt, Juſtitiâ regeretur, quibus, ſi Tu, ut jam hortor, facias, Exemplum non minimum miniſtrabis.

CAP. VII.

SIlente extunc Cancellario, *Princeps* ipſe ſic exorſus eſt: Viciſti me, Vir egregie, ſuaviſſimâ Oratione Tuâ, quâ & Animum meum Ardore non minimo Legis feciſti ſitire Documenta. Sed tamen duobus me huc illucque agitantibus, Animus ipſe affligitur: ut tanquam in turbido Mari Cymba neſciat quorſum dirigere Proras. Unum eſt, dum recolit quot Annorum Curriculis Leges addiſcentes earum ſtudio ſe conferunt, antequam ſufficientem earundem Peritiam nanciſcantur, quo timet Animus ipſe ne conſimiliter ego præteream Annos Juventutis meæ. Alterum eſt, an Angliæ Legum vel Civilium, quæ per Orbem percelebres ſunt, Studio operam dabo. Nam non niſi optimis Legibus populum regere licet, etiam ut dicit Philoſophus, " *Natura deprecatur Optima.*" Quare libenter ſuper his, quod tu conſulis, auſcultaremus. Cui Cancellarius. Non ſunt hæc, *Fili Regis*, tantis celata Myſteriis ut Deliberatione egeant ingenti, quare quid in his Mihi viſum eſt prodere non differemus.

CAP. VIII.

PHiloſophus in primo Phyſicorum dicit, quòd " *Tunc unumquodque ſciré* " *arbitramur, cum Cauſas & Principia ejus cognoſcamus uſque ad Ele-* " *menta.*" Super quem Textum Commentator dicit, quòd Ariſtoteles per Principia intellexit Cauſas efficientes, per Cauſas intellexit Cauſas finales, & per Elementa Materiam & Formam. In Legibus verò non ſunt Materia & Forma, ut in Phyſicis & Compoſitis. Sed tamen ſunt in eis Elementa quædam, unde ipſæ profluunt, ut ex Materiâ & Formâ, quæ ſunt *Conſuetudines, Statuta, &* (*a*) *Jus Naturæ*, ex quibus ſunt omnia Jura Regni, ut ex Materiâ & Formâ ſunt quæque Naturalia: & ut ex Literis, quæ etiam Elementa appellantur, ſunt omnia quæ leguntur. *Principia* autem, quæ Commentator dicit eſſe Cauſas efficientes, ſunt quædam Univerſalia, quæ in Legibus Angliæ docti, ſimiliter & Mathematici, *Maximas* vocant: Rhetorici Paradoxas: & Civiliſtæ Regulas Juris denominant. Ipſa reverà non Argumentorum vi, aut Demonſtrationibus Logicis dignoſcuntur, ſed ut Secundo *Poſteriorum* docetur, Inductione, via ſenſûs & memoriæ adipiſcuntur. Quare & primo Phyſicorum Philoſophus dicit, " Quòd *Principia non fiunt ex aliis, neque ex alterutris, ſed ex illis alia* " *fiunt,*" Quo primo Topicorum ſcribitur, quod " *unumquodque Princi-* " *piorum eſt ſibi ipſi Fides.* Unde, *cum negantibus ea* (dicit Philoſophus) " *non eſt diſputandum*" quia ut ſcribitur VI. Ethicorum, " *Ad Principia non* " *eſt Ratio.*" Igitur Principiis imbuendi ſunt, quiqui gliſcunt aliquas intelligere Facultates. Ex eis etenim revelantur Cauſæ finales, ad quas, Rationis Ductu, per Principiorum Agnitionem pervenitur; unde, his tribus, viz. *Principiis, Cauſis, & Elementis ignoratis, Scientia, de quâ ipſa ſunt, penitùs ignoratur.* Et his cognitis, etiam Scientiam illam cognitam eſſe, non determinatè, ſed in confuſo & univerſaliter, arbitratur.

Sic Legem Divinam nos nôſſe indicamus, dum Fidem, Charitatem, & Spem, Sacramenta quoque Eccleſiæ ac Dei Mandata, nos intelligere ſentiamus; cætera Theologiæ Myſteria Eccleſiæ Præſidentibus relinquentes. Quare Dominus Diſcipulis ſuis ait, " *Vobis datum eſt nôſſe Myſterium Regni* " *Dei, cæteris autem in Parabolis, ut videntes non videant, &c.*" Et Apoſtolus dixit, " *Non plus ſapere quam oportet ſapere.*" Et alibi, " *Non alta* " *ſapientes.*" Sic & Tibi, *Princeps*, neceſſe non erit Myſteria Legis Angliæ longo Diſciplinatu rimare, ſufficiet Tibi, ut in Grammaticâ Tu profeciſti, etiam & in Legibus proficias. Grammaticæ verò perfectionem, quæ ex *Etymologiâ, Orthographiâ, Proſodiâ, & Syntaxi*, quaſi ex quatuor Fontibus profluit, non Specie tenus induiſti, & tamen Grammaticâ ſufficienter eruditus es, ita ut meritò Grammaticus denomineris. Conſimiliter quoque denominari Legiſta mereberis, ſi Legum Principia & Cauſas, uſque ad Elementa, Diſcipuli More indagaveris. Non enim expediet Tibi, propriâ Senſûs Indagine Legis Sacramenta rimare, ſed relinquantur illa Judicibus Tuis & Advocatis, qui in Regno Angliæ Servientes ad Legem appellantur, ſimiliter & aliis peritis, *quos* (*b*) *Apprenticios* vulgus denominat: meliùs enim per alios, quàm per Teipſum Judicia reddes, quo (*c*), *proprio Ore, nullus Regum Angliæ* Judicium proferre uſus eſt; & tamen ſua ſunt omnia Judicia Regni, licèt per alios ipſa reddantur, ſicut & *Judicum omnium Sententias Joſaphat* aſſeruit *eſſe Judicia Dei.* Quare, *Tu Princeps ſereniſſime*, parvo Tempore, parvâ Induſtriâ, ſufficienter eris in Legibus Regni Angliæ eruditus, dummodo ad ejus Apprehenſionem Tu conferas Animum tuum. Dicit namque *Seneca* in Epiſtolâ ad *Lucillum*, " *Nihil eſt quod* (*d*) *pertinax* " *Opera, & diligens Cura, non expugnat.*" Noſco namque Ingenii Tui Perſpicacitatem, quo audacter pronuncio, quòd in Legibus illis, licèt earum Peritia, qualis Judicibus neceſſaria eſt, vix XX. Annorum Lucubrationibus acquiratur, Tu Doctrinam Principi congruam in Anno uno ſufficienter

(*a*) Tranſl. Cap. III. b. (*b*) Cap. VIII. (2). (*c*) Ibid. (3). (*d*) Ibid. l.

nanciſcêris, nec interim Militarem Diſciplinam, ad quam tam ardenter anhelas, negliges; ſed eâ, Recreationis Loco, etiam Anno illo, Tu ad Libitum perfruêris.

CAP. IX.

SEcundum verò, *Princeps*, quod tu formidas, conſimili nec Majori operâ elidetur. Dubitas nempe, an Anglorum Legum, vel Civilium Studia Te conferas, dum Civiles ſupra humanas cunctas Leges alias, Fama per Orbem extollat glorioſa. Non te conturbet, *Fili Regis*, hæc Mentis Evagatio: Nam non poteſt Rex Angliæ ad Libitum ſuum Leges mutare Regni ſui, Principatu namque nedum *Regali*, ſed & *Politico*, ipſe ſuo Populo dominatur. Si regali tantùm ipſe præeſſet eis, Leges Regni ſui mutare ille poſſet, *Tallagia* quoque & cætera Onera eis imponere ipſis inconſultis, quale Dominium denotant Leges Civiles, cùm dicant, (*a*) "*Quod Principi placuit, Legis habet Vigorem.*" Sed longè aliter poteſt Rex politicè imperans Genti ſuæ, quia nec Leges ipſe ſine Subditorum Aſſenſu mutare poterit, nec Subjectum Populum renitentem onerare Impoſitionibus peregrinis, quare Populus ejus liberè fruetur Bonis ſuis, Legibus quas cupit Regulatus, nec per Regem ſuum, aut quemvis alium depilatur; conſimiliter tamen plaudit Populus, ſub Rege Regaliter tantum principante, dummodo ipſe in Tyrannidem non labatur. De quali Rege dicit Philoſophus III. Politicorum, "Quòd *melius eſt Civitatem regi Viro optimo, quàm* "*Lege optimâ.*" Sed quia non ſemper contingit Præſidentem Populo hujuſmodi eſſe Virum, *Sanctus Thomas* in Libro quem Regi Cypri ſcripſit, *de Regimine Principum*, optare cenſetur, Regnum ſic inſtitui, ut Rex non liberè valeat Populum Tyrannide gubernare, quod ſolùm fit, dum Poteſtas Regia Lege Politicâ cohibetur: Gaude igitur, *Princeps optime*, talem eſſe Legem Regni in quo Tu ſucceſſurus es, quia & Tibi, & Populo, ipſa Securitatem præſtabit non minimam & Solamen. Tali Lege, ut dicit idem *Sanctus*, regulatum fuiſſet totum Genus humanum, ſi in Paradiſo Dei Mandatum non præteriiſſet: tali etiam Lege regebatur Synagoga, dum ſub ſolo Deo Rege, qui eam in Regnum peculiare adoptabat; illa militabat; ſed demum ejus Petitione, Rege Homine ſibi conſtituto, ſub Lege tantùm Regali ipſa deinceps humiliata eſt. Sub quâ tamen dum optimi Reges ſibi præfuerunt, ipſa plauſit, & dum (*b*) Diſcoli ei præeſſebant, ipſa inconſolabiliter lugebat, ut Regum Liber hæc diſtinctiùs manifeſtavit. Tamen quia de Materiâ iſtâ in Opuſculo, quod Tui contemplatione de *Naturâ Legis Naturæ* exaravi, ſufficienter puto me deſceptâſſe, plus inde loqui jam deſiſto.

CAP. X.

TUNC *Princeps* illicò ſic ait. Unde hoc, Cancellarie, "*Quòd Rex* "*unus Plebem ſuam Regaliter tantùm regere valeat, & Regi alteri* "*Poteſtas hujuſmodi denegatur?*" æqualis Faſtigii cum ſint Reges ambo, cur in Poteſtate ſint ipſi diſpares nequeo non admirari.

CAP. XI.

CAncellarius. Non minoris eſſe Poteſtatis Regem Politicè imperantem, quàm qui ut Vult Regaliter regit Populum ſuum, in ſupradicto Opuſculo ſufficienter eſt oſtenſum; diverſæ tamen Authoritatis eos in Subditos ſuos ibidem ut jam nullatenus denegavi, cujus Diverſitatis Cauſam, ut potero, Tibi pandam.

(*a*) V. poſt Cap. XXXIV. (*b*) Tranſl. Cap. IX. n.

CAP. XII.

HOmines quondam Potentiâ præpollentes, avidi Dignitatis & Gloriæ, vicinas ſæpe Gentes ſibi Viribus ſubjugârunt, ac ipſis ſervire, obtemperare quoque Juſſionibus ſuis compulerunt, quas Juſſiones extunc Leges Hominibus illis eſſe ipſi ſancierunt. Quarum perpetione diutinâ, ſubjectus ſic Populus, dum per Subjicientes à cætorum Injuriis defendebatur, in Subjicientium Dominium conſenſerunt: Opportuniùs eſſe arbitrantes, ſe unius ſubdi Imperio, quo erga alios defenderentur, quàm omnium eos infeſtare volentium Oppreſſionibus exponi. Sic que Regna quædam inchoata ſunt, & Subjicientes illi, dum Subjectum Populum ſic rexerunt, *a regendo ſibi Nomen Regis uſurpârunt*, eorum quoque Dominatus tantùm *Regalis* dictus eſt. Sic *Nembroth* primus ſibi Regnum comparavit, tamen non Rex ipſe, ſed " *Robuſtus Venator coram Domino*" Sacris Literis appellatus eſt: quia ut Venator Feras Libertate fruentes, ipſe Homines ſibi compeſcuit obedire. Sic *Belus Aſſyrias*, & *Ninus* quàm Magnam *Aſiæ* Partem Ditioni ſuæ ſubegerunt. Sic & *Romani* Orbis Imperium uſurpârunt, qualiter ferè in Omnibus Gentibus Regna inchoata ſunt. Quare, dum Filii Iſrael Regem poſtulabant, ſicut tunc habuerunt omnes Gentes, Dominus inde offenſus Legem *Regalem* eis per Prophetam explanari mandavit. Quæ non aliud fuit, quàm Placitum Regis eis præeſſentis, ut in primo Regum Libro pleniùs edoceretur. Habes nunc (ni fallor) *Princeps clariſſime*, Formam Exordii Regnorum Regaliter poſſeſſorum. Quare, quomodo Regnum *Politicè* regulatum primitùs erupit, etiam jam propalare conabor, ut cognitis amborum Regnorum Initiis, Cauſam Diverſitatis, quam Tu quæris, inde elicere Tibi facillimum ſit.

CAP. XIII.

SAnctus *Auguſtinus*, in Libro XIX. *de Civitate Dei*, *Cap.* XXIII. dicit " Quòd *Populus eſt* (*a*) *Cætus Hominum, Juris conſenſu & Utilitatis* " *Communione Sociatus.*" Nec tamen Populus hujuſmodi dum acephalus, (*i.*) ſine Capite, eſſe Corpus vocari meretur. Quia ut in *Naturalibus*, Capite detruncato, reſiduum non Corpus, ſed Truncum appellamus; ſic & in *Politicis*, ſine Capite Communitas nullatenus corporatur. Quo, primo Polit. dicit *Philoſophus* " Quòd *quandocunque ex pluribus conſtituitur unum* " *inter illa, unum erit Regens, & alia erunt recta.*" Quare Populum, ſe in Regnum aliunde Corpus *Politicum* erigere volentem, ſemper oportet unum præficere totius Corporis illius regitivum, quem *Regem* nominare ſolitum eſt. Hoc Ordine, ſicut ex Embrione Corpus ſurgit Phyſicum, uno Capite regulatum, ſic ex Populo erumpit Regnum, quod Corpus extat myſticum, uno Homine ut Capite gubernatum. Et ſicut in Naturali Corpore, ut dicit Philoſophus, Cor eſt primum vivens, habens in ſe Sanguinem, quem emittit in omnia ejus Membra, unde illa vegetantur & vivunt; ſic in Corpore Politico, Intenſio Populi primum vividum eſt, habens in ſe Sanguinem, viz. Proviſionem Politicam Utilitati Populi illius, quam in Caput & in omnia Membra ejuſdem Corporis ipſa tranſmittit, quo Corpus illud alitur & vegetatur. Lex verò, ſub quâ Cœtus Hominum Populus efficitur, Nervorum Corporis Phyſici tenet Rationem: Quia ſicut per Nervos Campago Corporis ſolidatur, ſic per (*b*) Legem, quæ a *Ligando* dicitur, Corpus hujuſmodi Myſticum ligatur & ſervatur in unum, & ejuſdem Corporis Membra ac Oſſa, quæ Veritatis, quâ Communitas illa ſuſtentatur, Soliditatem denotant, per Legem, ut Corpus Naturale per nervos propria retinent Jura. Et ut non poteſt Caput Corporis Phyſici Nervos ſuos commutare, neque Membris ſuis proprias Vires, & propria Sanguinis Alimenta denegare, nec Rex, qui Caput Corporis Politici eſt, mutare po-

(*a*) Tranſl. Cap. XIII. 2. (*b*) Ibid. d.

teſt Leges Corporis illius, nec ejuſdem Populi ſubſtantias proprias ſubtrahere, reclamantibus eis aut invitis. Habes ex hoc jàm, *Princeps*, Inſtituti omnis *Politici* Regni Formam, ex quâ metiri poteris Poteſtatem, quam Rex ejus in Leges ipſius aut Subditos valeat exercere: Ad Tutelam namque Legis Subditorum, ac eorum Corporum & Bonorum Rex hujuſmodi erectus eſt, & hanc Poteſtatem a Populo effluxam ipſe habet, quo ei non licet Poteſtate aliâ ſuo Populo dominari: quare ut Poſtulationi Tuæ, quâ certiorari cupis, unde hoc provenit quòd Poteſtates Regum tam diverſimodè variantur, ſuccinctiùs ſatisfaciam. Firmè conjector, quòd diverſitates Inſtitutionum Dignitatum illarum, quas propalavi, prædictam Diſcrepantiam ſolummodo operantur, prout Rationis Diſcurſu Tu ex Præmiſſis poteris exhaurire. Sic namque Regnum *Angliæ*, quod ex *Bruti* (*c*) Comitivâ *Trojanorum*, quam ex *Italiæ* & *Græcorum* Finibus perduxit, in Dominium *Politicum* & *Regale* prorupit: Sic & (4) *Scotia, quæ ei quondam ut Ducatus obedivit, in regnum crevit Politicum & Regale.* Alia quoque plurima Regna nedum Regaliter, ſed & Politicè regulari, tali Origine Jus ſortita ſunt. Unde *Diodorus Siculus* in Secundo Libro *Hiſtoriarum priſcarum* de *Egyptiis* ſic ſcribit, Suam primùm *Egyptii* Reges Vitam non aliorum Regnantium, quibus Voluntas pro Lege eſt, traducebant Licentia, ſed veluti privati tenebantur Legibus, neque id ægrè ferebant, *exiſtimantes parendo Legibus ſe beatos fore.* Nam ab his, qui ſuis indulſerunt Cupiditatibus, multa cenſebant fieri, quibus Dampna Periculaque ſubirent. Et in quarto Libro ſic ſcribit: " Aſſumptus in Regem *Ethiopum* vitam ducit ſtatutam Legibus, " omniáque agit juxta Patrios Mores, neque Præmio neque Pœnâ afficiens " quenquam prætèr per traditam a Superioribus Legem." Conſimiliter loquitur de Rege *Saba in felici Arabiâ*, & aliis quibuſdam Regibus, qui priſcis Temporibus feliciter regnabant.

CAP. XIV.

CUI *Princeps*; Effugâſti, Cancellarie, Declarationis Tuæ Lumine Tenebras, quibus obducta erat Acies Mentis meæ, quo clariſſimè jam conſpicio, quòd non alio Pacto Gens aliqua, proprio Arbitrio, unquam ſe in Regnum corporavit, niſi ut per hoc ſe & ſua, quorum Diſpendia formidabant, tutiùs quàm antea poſſiderent; quaſi Propoſito Gens hujuſmodi fraudaretur, ſi exinde Facultates eorum eripere poſſit Rex ſuus, quod antea facere ulli Hominum non licebat. Et adhuc graviùs multò Populus talis læderetur, ſi deinde (*a*) peregrinis Legibus, etiam ipſis forſan exoſis, regerentur. Et maximè, ſi Legibus illis eorum minoraretur Subſtantia, pro cujus vitandâ Jacturâ, ut pro ſuorum Tutelâ Corporum, ipſi ſe Regis Imperio Arbitrio proprio ſubmiſerunt, non potuit reverâ Poteſtas hujuſmodi ab ipſis erupiſſe; & tamen ſi non ab ipſis, Rex hujuſmodi ſuper ipſos nullam obtineret Poteſtatem. E regione, aliter eſſe concipio de Regno, quod Regis ſolùm Auctoritate & Potentiâ incorporatum eſt, quia non alio pacto Gens talis ei ſubjecta eſt, niſi ut ejus Legibus, quæ ſunt illius Placita, Gens ipſa, quæ eodem Placito Regnum ejus effecta eſt, obtemperaret & regeretur. Neque Cancellarie, a meâ hucuſque Memoriâ elapſum eſt, quod aliàs in Tractatu de Naturâ Legis Naturæ, horum duorum Regum æqualem eſſe Potentiam doctis Rationibus oſtendiſti, dum Poteſtas, quâ eorum alter perperàm agere liber eſt, Libertate hujuſmodi non augetur, ut poſſe langueſcere morive, Potentia non eſt, ſed propter Privationes in Adjecto, Impotentia potiùs denominandum. Quia, ut dicit *Boetius*, " *Potentia non eſt niſi ad Bonum*;" quòd poſſe malè agere, ut poteſt Rex Regaliter regnans liberiùs quàm Rex politicè dominans Populo ſuo, potiùs ejus Poteſtatem minuit, quàm augmentat. Nam Sancti Spiritus, jam confirmati in Gloriâ, qui peccare nequeunt, potentiores nobis ſunt, qui ad omne Facinus liberis gaudemus Habenis. Solum igitur mihi jam ſupereſt a Te

(*c*) Tranſl. Cap. XIII. h. (4) Ibid. (4). (*a*) Cap. XIV. a.

ſciſcitandum,

ſciſcitandum, " *Si Lex Angliæ*, ad cujus Diſciplinatum me provocas, *bona* " *& efficax eſt ad Regimen Regni illius; ut Lex Civilis, quâ ſacrum regu-* " *latur Imperium, ſufficiens arbitratur ad Orbis Regimen univerſi?*" Si me in hoc, Demonſtrationibus congruis, indubium reddideris, ad ſtudium Legis illius illicò me conferam, nec Te Poſtulationibus meis ſuper his ampliùs fatigabo.

CAP. XV.

CAncellarius. Memoriæ Tuæ, *Princeps optime*, commendâſti, quæ Tibi hucuſque ſuggeſſi, quare & quæ jam interrogas, meritus es ut pandam. Scire Te igitur volo, quòd *omnia Jura Humana, aut ſunt Lex Naturæ, Conſuetudines, vel Statuta, quæ & Conſtitutiones* appellantur. Sed Conſuetudines, & Legis Naturæ Sententiæ, poſtquam in Scripturam redactæ, & ſufficienti Auctoritate Principis promulgatæ fuerint, ac cuſtodiri jubeantur, in Conſtitutionum ſive Statutorum Naturam mutantur, & deinde pœnaliùs quàm antea Subditos Principis ad earum Cuſtodiam conſtringunt, ſeveritate Mandati illius. Qualis eſt Legum Civilium Pars non modica, quæ a Romanorum Principibus in magnis Voluminibus redigitur, & eorum Auctoritate obſervari mandatur. Unde Legis Civilis, ut cætera Imperatorum Statuta, jam pars illa Nomen ſortita eſt. Si igitur in his tribus, quaſi omnis Juris Fontibus, Legis Angliæ Præſtantiam probaverim præfulgere, Legem illam bonam eſſe & efficacem ad Regni illius Regimen etiam comprobavi. Deinde, ſi eam ad ejuſdem Regni Utilitatem, ut Leges Civiles ad Imperii Bonum, accommodam eſſe lucidè oſtenderim, nedum tunc Legem illam præſtantem, ſed &, ut Leges Civiles, electam (ut tu optas) etiam patefeci. Igitur hæc duo Tibi oſtendere ſatagens, ſic progredior.

CAP. XVI.

LEges Angliæ in his, quæ ipſæ ſanciunt, Legis Naturæ Ratione non meliores pejorèſve ſunt in Judiciis ſuis, quàm in conſimilibus ſunt omnes Leges cæterarum Nationum. Quia, ut dicit *Philoſophus*, V. *Ethicorum*: " *Jus naturale eſt, quod apud omnes Homines eandem habet Potentiam*," quare de eâ ampliùs diſceptare non expedit. Sed quales ſunt Angliæ Conſuetudines ſimiliter & ſtatuta, eſt a modo perſcrutandum, & primò Conſuetudinum illarum viſitabimus Qualitates.

CAP. XVII.

REgnum *Angliæ* primò per *Britanos* inhabitatum eſt; deinde, per *Romanos* regulatum; iterumque per *Britanos*, ac deinde per *Saxones* poſſeſſum, qui Nomen ejus ex *Britanniâ* in *Angliam* mutaverunt. Ex tunc per *Danos* idem Regnum parumper dominatum eſt, & iterum per *Saxones*, ſed finaliter per *Normannos*, quorum Propago Regnum illud obtinet in præſenti. Et in omnibus Nationum harum & Regum earum Temporibus, Regnum illud eiſdem, quibus jam regitur, Conſuetudinibus continuè regulatum eſt. Quæ, ſi optimæ non exſtitiſſent, (5) *aliqui Regum illorum Juſtitiâ, Ratione, vel Affectione* concitati eas mutâſſent, aut omninò deleviſſent; (6) *& maximè Romani*, qui Legibus ſuis quaſi totum Orbis reliquum judicabant. Similiter & alii Regum prædictorum, qui ſolùm Gladio Regnum Angliæ poſſiderunt, quò & Potentiâ ſimili ipſi Leges ejus exinaniſſe valuerunt. Neque verò tantorum Temporum Curriculis, (7) *Leges Civiles in quantum Romanorum inveteratæ ſunt*, neque *Venetorum* Leges, quæ ſuper alias Antiquitate divulgantur, quorum tum Inſula, in Initio

(5) Tranſl. Cap. XVII. (5). (6) Ibid. f (6). (7) Ibid. g (7).

Britonum, inhabitata non fuit, ſicut nec *Roma* condita, nec ullorum Mundi Regnorum Deicolarum Leges tanto ævo inolitæ ſunt. Quare non bonas, immò non optimas eſſe *Anglorum* Conſuetudines, ſicut non dicere, ita nec ſuſpicari Fas eſt.

CAP. XVIII.

STatuta tunc Anglorum bona ſint necne, ſolùm reſtat explorandum. Non enim emanant illa a Principis ſolùm Voluntate, ut Leges in Regnis quæ tantùm Regaliter gubernantur, ubi quandoque Statuta ita Conſtituentis procurant Commodum ſingulare, quòd in ejus Subditorum ipſa redundant Diſpendium & Jacturam: Quandóque etiam Inadvertentia Principum hujuſmodi, & ſibi conſulentium inertia, ipſa tam inconſultè eduntur, quòd Corruptelarum Nomina, potiùs quàm Legum, illa merentur. Sed non ſic Angliæ Statuta oriri poſſunt, dum *nedum Principis Voluntate, ſed & totius Regni Aſſenſu*, ipſa conduntur, quò Populi Læſuram illa efficere nequeunt, vel non eorum Commodum procurare. Prudentiâ, etiam & Sapientiâ neceſſariò ipſa eſſe referta putandum eſt, dum non unius, aut centum ſolùm conſultorum Virorum Prudentiâ, ſed pluſquam trecentorum electorum Hominum, quali Numero olim *Senatus Romanorum* regebatur; ipſa edita ſunt, ut ii, qui Parliamenti Angliæ Formam, Convocationis quoque ejus Ordinem & Modum noverunt, hæc diſtinctiùs referre nôrunt. Et ſi Statuta hæc tantâ Solemnitate & Prudentiâ edita, Efficaciæ tantæ, quantæ Conditorum cupiebat Intentio, non eſſe contingant, concitò reformari ipſa poſſunt; & non ſine Communitatis & Procerum Regni illius Aſſenſu, quali ipſa primitùs emanarunt. Patent igitur jam Tibi, *Princeps*, Legum Anglorum Species omnes. Earum quoque Qualitates, ut ſi bonæ ipſæ ſint, metiri Tu poteris Prudentiâ Tuâ, Comparatione etiam aliarum Legum, & cum nullam tantæ Præſtantiæ in Orbe reperies, eas nedum bonas, ſed Tibi optabiliſſimas, fore, neceſſariò confiteberis.

CAP. XIX.

SOlum jam unum de his, quibus agitatur Animus Tuus, reſtat explanandum, viz. An, ut Civiles, ita & Anglorum Leges, frugi ſint & efficaces iſti Angliæ Regno, ut illæ Imperio, etiam & accommodæ judicari mereantur. *Comparationes* verò, *Princeps*, ut Te aliquando dixiſſe recolo, *odioſæ reputantur*; quo eas aggredi non delector; Tu, an æqualis ſint ambæ Leges meriti, unáve alterâ celſius Præconium mereatur, non ex meo Judicio, ſed ex his, in quibus earum differunt Sententiæ, efficacius carpere poteris Argumentum. Nam ubi conveniunt Leges ambæ, æqualis Laudis ipſæ ſunt; ſed in Caſibus, ubi ipſæ diſſentiunt, præſtantioris Legis Præconia dignâ Penſatione refulgent. Quare Caſus hujuſmodi aliquos jam in medium proferemus, ut quæ Legum illarum eos juſtiùs meliuſque definiat æquâ Lance valeas ponderare. Et primò, ex caſibus maximi Ponderis Exemplum proponamus.

CAP. XX.

SI coram Judice Contendentes ad Litis perveniant Conteſtationem, ſuper materiâ Facti, quam Legis Angliæ periti *Exitum Placiti* appellant; Exitûs hujuſmodi Veritas per Leges Civiles, Teſtium Depoſitione probari debet, in quâ duo Teſtes idonei ſufficiunt. Sed per Leges Angliæ, *Veritas illa non, niſi* XII. *Hominum de Vicineto, ubi Factum hujuſmodi ſupponitur, Sacramento, Judici conſtare poterit.* Quæritur igitur, quis horum duorum Proceſſuum tam diverſorum rationabilior cenſeri debeat, & efficacior ad

Veritatem, quæ ſic quæritur, revelandam. Quia Lex, quæ eam certiùs meliuſque oſtendere poteſt, præſtantior in hoc eſt Lege alterâ, quæ non tantæ Efficaciæ eſt & Virtutis; quare in hujus Rei Indagine ſic procedimus.

CAP. XXI.

PER Leges Civiles, Pars, quæ in Litis Conteſtationem affirmativam dicit, (8) *Teſtes* producere debet, quos ipſe ad Libitum ſuum nominabit. Negativa autem probari non poteſt, viz. directè, licèt poſſit per Obliquum: Exilis quippe creditur eſſe Potentiæ, minoris quoque Induſtriæ, qui de omnibus quos noſcit Hominibus duos repirire nequit, ita Conſcientiâ & Veritate vacuos, ut Timore, Amore, vel Commodo, omni velint contraire Veritati. Hos poteſt tunc ipſe in Teſtes producere in Cauſâ ſuâ. Et ſi contra eos Pars altera dicere velit, vel contra eorum Dicta, non ſemper continget eos, eorum quoque Mores aut Facta, apud contradicere volentem, agnoſci, ut ex eorum Fœditate & Vitiis Teſtes illi poſſint reprobari. Et dum eorum Dicta Affirmativam contineant, non facilè poterunt illa per Circumſtantias aut obliqua alia improbari: Quis tunc poterit ſuorum aut ſui ipſius, ſub Lege tali, vivere ſecurus, dum cuilibet ſibi inimicari volenti Lex tale præſtat Subſidium? Et qui iniqui duo tam incauti ſunt, quo facti, de quo ipſi examinabuntur in initio, non, antequam in Teſtes producantur, occultè fingant Imaginem & Figuram, componant quoque eidem omnes Circumſtantias, quales ſibi fuiſſent, ſi illud in Veritate conſtitiſſet? " *Prudentiores namque*, ut dicit Dominus, *ſunt Filii hujus* " *Mundi quàm Filii Lucis.*" Sic *Jeſabel* ſceleratiſſima Teſtes duos, Filios *Belial*, contra *Nabot* in Judicio produxit, quo ipſe vitam perdidit, & *Achab* Rex ejus Vineam poſſidebat. Sic duorum Senum etiam Judicum Teſtimonio, mortua fuiſſet pro Adulterio Uxor caſtiſſima *Suſanna*, ſi non eam miraculosè liberaſſet Dominus inexcogitabili Prudentiâ, quam & Naturâ non habuit Puer junior, nondum ætate provectus. Et ſi ipſos, Depoſitione ſuâ variâ, convicerat Puer ille eſſe falſarios; quis, niſi ſolus Dominus, noviſſe poterit eos in Dictis ſuis taliter variaturos? dum, non de Arboris Naturâ, ſub quâ imputatum Facinus fiebat, Lex aliqua eos arctabat reminiſci. Quia Teſtes Sceleris cujuſque conſiderare non putantur omnia Umbracula & cætera vicina illi Facto, quæ ad Aggravationem vel Detectionem Criminis illius minimè operantur. Sed dum de Arborum Speciebus Judices illi nequam ultrò deponentes variabant, eorum Dicta ipſos veritatis fuiſſe Prævaricatores demonſtrabant; quo & (*a*) Talionis Pœnam meritò incurrerunt. Noſti & Tu, *Princeps divine*, qualiter jam tardè *Magiſter Johannes Fringe*, qui poſtquam Annis tribus Sacerdotali functus eſt Officio, duorum iniquorum Depoſitione, qui eum antea Juvenculam quandam affidâſſe teſtati ſunt, ſacrum Presbyteratûs Ordinem relinquere compulſus eſt, & Matrimonium cum Fœminâ illâ conſummare. Cum quâ, poſtquam Annis 14. moratus, Sobolem ſeptimam ſuſcitaverat, demum de Crimine læſæ Majeſtatis in Tuam Celſitudinem conjurato convictus, ſubornatos fuiſſe Teſtes illos, & falſum dixiſſe Teſtimonium, in Mortis ſuæ Articulo, coram omni Populo faſſus eſt. Qualiter & ſæpe perverti Judicia, falſorum Teſtium medio, etiam ſub optimis Judicibus, non eſt Tibi inauditum, nec incognitum Mundo, dum Scelus illud (proh Dolor!) creberrimè committatur.

(8) Tranſl. Cap. XXI. a (8). (*a*) Ibid. h.

CAP. XXII.

NON igitur contenta eſt Lex *Franciæ*, in Criminalibus, ubi Mors imminet, (*a*) Reum Teſtibus convincere, ne Falſidicorum Teſtimonio Sanguis innocens condemnetur. Sed mavult Lex illa Reos tales *Torturis* cruciari, quouſque ipſi eorum Reatum confiteantur, quàm Teſtium Depoſitione, qui ſæpe Paſſionibus iniquis, & quandoque Subornatione Malorum, ad Perjuria ſtimulantur. Quali Cautione & Aſtutiâ, Criminoſi etiam & de Criminibus ſuſpecti, tot Torturarum in Regno illo Generibus affliguntur, quòd faſtidit Calamus ea Literis deſignare. Quidam verò in (*b*) Equuleis extenduntur, quo eorum rumpuntur Nervi, & venæ in Sanguinis Fluenta prorumpunt. Quorundam verò, diverſorum Ponderum Pendulis, diſſolvuntur Compagines & Juncturæ. Et quorundam (*c*) gaggantur Ora, uſque dum per illa, tot Aquarum infundantur Fluenta, ut ipſorum Venter Montis tumeſcant more; quo tunc Venter ille, Foſſorio vel ſimili percuſſus Inſtrumento, per os aquam illam evomat, ad inſtar Balenæ, quæ cum Halecibus & aliis Piſciculis mare abſorbuit, Aquam deſpumat ad Altitudinem Arboris Pini. Piget (proh Pudor!) jam penna exquiſitorum ad hæc Cruciatuum enarrare immania. Nam eorum variatus Numerus vix notari poterit magnâ in Membranâ, Leges etiam ipſæ Civiles, deficiente Teſtium Copiâ, in Criminalibus, Veritatem conſimilibus extorquent Tormentis. Qualiter & faciunt etiam quamplurima Regna. Sed quis tam duri Animi eſt, qui ſemel ab atroci tanto Torculari laxatus, non potiùs innocens ille omnia fateretur Scelerum Genera, quàm Acerbitatem ſic experti iterum ſubire Tormenti, & non ſemel mori mallet, dum mors ſit ultimum Terribilium, quàm toties occidi, & totidem Gehennales Furias morte amariores ſuſtinere? Et nonne, *Princeps*, Tu noviſti Criminoſum quendam, qui inter Tormenta hujuſmodi militem Nobilem, probum, & fidelem de Proditione quadam, ſuper quâ, ut aſſeruit, ipſi duo inſimul conjurârunt, accuſare, quod & conſtanter poſtmodùm ipſe fecit, a Torturis illis relaxatus, ne iterum eadem Tormenta ipſa ipſe ſubiret. Sed demum, cùm ex Pœnis illis læſus uſque ad Mortis Articulum infirmaretur, ultimum quoque Viaticum, Chriſti videlicet Corpus, ſumpſiſſet, juravit tunc ſuper Corpus illud, & per Mortem, quam tunc protinùs credidit ſe paſſurum, militem illum innocentem fuiſſe, & immunem de omnibus in quibus eum accuſavit; tamen ait Pœnas, in quibus ipſe Tempore Delationis ſuæ fuerat, ita atroces exſtitiſſe, quòd priuſquam eas iterum experiretur, etiam eundem Militem ille iterum accuſaret, ſimiliter & Patrem proprium, licèt tunc in Mortis Limine, quam non credidit ſe poſſe evadere, fuerit conſtitutus; nec verò ipſe Mortem, quam tunc metuit, evaſit. Sed demum ſuſpenſus, Tempore Mortis ſuæ, ipſum Militem purgavit ab omni Crimine, de quo dudum defamavit. Taliter, proh Dolor, & quam plures alii miſeri faciunt, non veritatis Cauſâ, ſed ſolùm urgentibus Torturis arctati; quid tunc Certitudinis reſultat ex Confeſſionibus taliter compreſſorum? Cæterùm ſi innocens aliquis non immemor ſalutis æternæ, in hujuſmodi Babylonis Fornace, cum tribus Pueris benedicat Domino, nec mentiri velit in Perniciem Animæ ſuæ, quò Judex eum pronunciet innocentem, nonne eodem Judicio Judex ille ſeipſum reum judicat omnis Sævitiæ & Pœnarum, quibus innocentem afflixit? O quàm crudelis eſt Lex talis, quæ dum innocentem dampnare nequit, Judicem ipſa condemnat? Verè non Lex Ritus talis eſſe perhibetur, ſed potiùs ſemita ipſa eſt ad Gehennam. O Judex, quibus in Scholis didiciſti te præſentem exhibere, dum Pœnas luit Reus? Executiones quippe Judiciorum in Criminoſos per ignobiles fieri convenit; nam earum Actores infames ſolent eſſe ipſo Facto, quo & ipſi deinde ad Judicialem Apicem redduntur indigni. Non enim per Angelos, ſed per Dæmones, exequi facit Dominus Judicia

(*a*) Tranſl. Cap. XXII. a. (*b*) Ibid. c. (*c*) Ibid. d.

ſua,

ſua, reddita in Damnatos. Nec reverà in Purgatorio cruciant Animas, quamvis prædeſtinatas ad Gloriam, Angeli boni, ſed mali. Maligni etiam Homines ſunt, per quos Dominus in hoc Mundo miſeris tribuit Malum Pœnæ. Nam cùm dixerat Deus, I. Regum, in Capitulo viceſimo ſecundo, "*Quis decipiet mihi Ahab?*" Malus erat Spiritus, ille, qui reſpondit, "*Ego ero Spiritus Mendax in Ore omnium Prophetarum ejus.*" Non enim decuit Spiritum bonum exequi talia, licèt a Domino prodiit Judicium, quòd *Achab* Mendacio deciperetur. Sed dicet Judex forſan, Ego nihil egi Manibus meis in Cruciatibus iſtis. Sed quid refert propriis facere Manibus, an præſentem eſſe, & quod factum eſt Mandato ſuo iterum atque iterum aggravare. Solùm Magiſter Navis eſt, qui eam ducit ad Portum, licèt ejus Mandato alii agitent Proram. Credo quòd Vulnus, quo ſauciatur Animus Judicis Pœnas hujuſmodi infligentis, nunquam in Cicatricem veniet, maximè dum recolit Acerbitatem Pœnarum miſeri ſic afflicti.

CAP. XXIII.

PRæterea, *ſi ex Contractibus, illatiſve Injuriis, vel Hæreditatis Titulo*, Jus accreverit Homini agendi in Judicio: Si Teſtes non fuerint, vel ſi qui fuerint moriantur, ſuccumbet ipſe Agens in Cauſâ ſuâ, niſi Jus ſuum probare valeat inevitabilibus conjecturis, quod facere crebrò non contingit. Quare de Dominiis & aliis Poſſeſſionibus Jure Civili regulatis, ſimiliter & in Omnibus Actionibus cadentibus ſub eodem Jure, *Actiones Agentium* pro Defectu Teſtium quam pluries ſuffocantur, ita quòd earum vix Pars media optatum Finem ſortiatur. Qualis tunc eſt Lex hujuſmodi, quæ injuratis taliter deficit in Juſtitiâ reddendâ? dubito an juſta vocari mereatur, quia in eâdem Lege ſcribitur, quòd "*Juſtitia unicuique tribuit quod ſuum eſt,*" quod non facit Lex talis.

CAP. XXIV.

EXpoſitâ jam Formâ, quâ Leges Civiles de Veritate Facti in Judicio deducti Judicem erudiunt, ſupereſt ut *Modum, quo Leges Angliæ hujuſmodi Facti eliciunt Veritatem*, etiam doceamus. Nam ambarum Legum Formulis contiguè poſitis, Qualitates earundem lucidiùs eminebunt: Cum dicat Philoſophus, quòd "*Oppoſita juxta ſe poſita magis apparent.*" Sed in hoc, Oratorum More (Prohemii loco) quædam prænarrare congruet, quorum Agnitione, deinde tractanda clariùs patere queant; quare ſic procedimus. Regnum Angliæ per *Comitatus*, ut Regnum Franciæ per *Ballivatus* diſtinguitur; ita ut non ſit Locus in Angliâ, qui non ſit infra Corpus alicujus Comitatûs. Comitatus quoque dividuntur in *Hundreda*, quæ alicubi (9) *Wapentagia* nuncupantur. Hundreda verò dividuntur per (10) *Villas*, ſub quarum Appellatione continentur & *Burgi atque Civitates*. Villarum etenim Metæ non muris, Ædificiis, aut ſtratis terminantur, ſed Agrorum Ambitubus, Territoriis Magnis, (11) *Hamiletis* quibuſdam, & multis aliis, ſicut Aquarum, Boſcorum & Vaſtorum Terminis, quæ jam non expedit Nominibus deſignare; quia vix in Angliâ eſt Locus aliquis, qui non infra Villarum Ambitus contineatur, licèt privilegiati Loci quidam infra Villas de eiſdem Villis Pars eſſe non cenſentur. Præterea in quolibet Comitatu eſt Officiarius quidam unus, *Regis* (*a*) *Vicecomes* appellatus, qui inter cætera ſui Officii Miniſteria omnium Mandata & Judicia Curiarum Regis in Comitatu ſuo exequenda exequitur, *cujus Officium* (12) *annale eſt*, quò ei poſt Annum in eodem miniſtrare non licet, (13) *nec duobus* tunc ſequentibus Annis ad idem Officium reaſſumetur. Officiarius iſte ſic eligitur. Quolibet Anno in *Craſtino Animarum*, conveniunt in Scaccario

(9) Tranſl. Cap. XXIV. a (9). (10) Ibid. b (10). (11) Ibid. c (11). (*a*) Ibid. d. (12) Ibid. e (12). (13) Ibid. f (13).

Regis omnes Conſiliarii ejus tam Domini Spirituales & Temporales, quàm alii omnes Juſticiarii, omnes Barones de Scaccario, (*b*) Clericus Rotulorum, & quidam alii Officiarii, ubi ii omnes communi Aſſenſu nominant de quolibet Comitatu tres Milites vel Armigeros, quos inter cæteros ejuſdem Comitatûs ipſi opinantur melioris eſſe Depoſitionis & Famæ, & ad Officium Vicecomitis Comitatûs illius meliùs diſpoſitos; ex quibus Rex unum tantùm eligit, quem per Literas ſuas Patentes conſtituit Vicecomitem Comitatûs de quo eligitur pro Anno tunc ſequente; ſed ipſe, antequam Literas illas recipiat, jurabit ſuper Dei Evangelia, inter Articulos alios, quòd benè, fideliter, & indifferenter exercebit & faciet Officium ſuum toto Anno illo, neque aliquid recipiet Colore aut Cauſâ Officii ſui, ab aliquo alio quàm a Rege. His jam ſic præſuppoſitis, ad eorum, quæ quærimus, Indaginem procedamus.

CAP. XXV.

QUotieſcunque Contendentes in Curiis Regis Angliæ ad Exitum Placiti ſuper Materiâ Facti devenerint, concitò Juſticiarii per Breve Regis ſcribunt Vicecomiti Comitatûs, in quo Factum illud fieri ſupponitur, quòd ipſe (*a*) venire faciat coram eiſdem Juſticiariis ad certum Diem per eos limitatum, *duodecim probos* & (*b*) *legales Homines*, de (*c*) Vicineto, ubi illud Factum ſupponitur; qui neutram Partium ſic placitantium ullâ Affinitate attingunt; Ad (*d*) recognoſcendum ſuper eorum Sacramenta, ſi Factum illud factum fuerit, ſicut una earundem Partium dicit; vel non, ſicut altera Pars negat. Quo adveniente Die, Vicecomes returnabit Breve prædictum coram eiſdem Juſticiariis, unà cum Panello Nominum eorum, quos ipſe ad hoc Summonuit, quos (ſi venerint) utraque Pars recuſare poterit dicendo, quòd Vicecomes Panellum illud favorabiliter fecit pro Parte alterâ, viz. de Perſonis minùs indifferentibus: Quæ Exceptio, ſi comperta fuerit vera per Sacramentum duorum Hominum de eodem Panello ad hoc per Juſticiarios electorum, mox Panellum illud quaſſabitur; & Juſticiarii tunc ſcribent *Coronatoribus* ejuſdem Comitatûs quòd ipſi novum faciant Panellum. Quod cùm fecerint, ſi & illud conſimiliter repertum fuerit vitiatum, etiam & illud quaſſabitur. Et tunc Juſticiarii eligent *duos de Clericis Curiæ illius*, vel alios de eodem Comitatu, qui in Præſentiâ Curiæ per eorum Sacramenta facient indifferens Panellum, quod deinde per nullam Partium illarum calumniabitur; ſed cùm venerint ſic impanellati in Curiâ, quælibet Partium *excipere poteſt* contra Perſonam cujuſcunque eorum, ſicut & poteſt in omni Caſu & omni Tempore, quo aliquis qualitercunque impanellatus comparuerit in Curiâ ſuper Veritate Exitûs hujuſmodi juraturus, dicendo, quòd impanellatus ille eſt conſanguineus vel Affinis Parti alteri, vel Amicitiâ quacunque tali ſibi conjunctus, quòd *indifferens ipſe non eſt* oſtendere inter eos Veritatem. Qualium Exceptionum tot ſunt Genera & Species, quòd non licet eas brevi explicare Sermone. Quarum ſi aliqua reperta fuerit vera, non tunc jurabitur ille contra quem Exceptio illa proponitur, ſed cancellabitur Nomen ejus in Panello. Sic quoque fiet de omnibus Nominibus impanellatorum quouſque XII. eorum jurentur ita indifferentes, quòd verſus eos neutra Partium habeat aliquam Materiam Calumpniæ. Horum autem XII. ad minus IV. erunt (14) *de Hundredo*, ubi Villa in quâ Factum, de quo contenditur, fieri ſupponitur, ſita eſt; & *quilibet Juratorum hujuſmodi habebit Terras vel Redditus pro Termino Vitæ ſuæ, ad minus ad Valorem annuum* XL. s. Et hic Ordo obſervatur in omnibus Actionibus & Cauſis Criminalibus, realibus & perſonalibus, præterquam ubi Damna vel Debitum in perſonalibus non excedunt XL. Marcas Monetæ Angliæ, quia tunc non requiritur, quòd Juratores in Actionibus hujuſmodi tantum expendere poſſint. Habebunt tamen Terram vel Redditum

(*b*) Tranſl. Cap. XXIV. h. (*a*) Cap. XXV. d. (*b*) Ibid. e. (*c*) Ibid. e. (*d*) Ibid. f. (14) Ibid. k (14).

ad Valorem competentem, juxta Diſcretionem Juſticiariorum, alioquin ipſi minimè jurabuntur, ne per Inediam & Paupertatem Juratorum hujuſmodi, de facili valeant corrumpi aut ſubornari. Et ſi per tales Exceptiones, tot Juratorum Nomina in (e) Panello cancellentur, quòd non remaneat Numerus ſufficiens ad faciendum inde juratam, tunc mandabitur Vicecomiti per Breve Regis, quòd ipſe apponat plures Juratores, quod & ſæpiùs fieri poteſt, ita quòd Inquiſitio Veritatis ſuper Exitu Placiti non remanebit ob Defectum Juratorum. Et hæc eſt Forma, qualiter Juratores & Veritatis hujuſmodi Inquiſitores eligi debent in Curiâ Regis, ſimiliter & jurari; quare, quomodo ipſi de Veritate illâ dicendâ onerari debent & informari, jam reſtat ut quæramus.

CAP. XXVI.

JUratis demum in Formâ prædictâ XII. probis & legalibus Hominibus habentibus ultra Mobilia ſua Poſſeſſiones, ut prædicitur, ſufficientes, unde eorum Statum ipſi continere poterunt, & nulli Partium ſuſpectis nec inviſis, ſed eiſdem vicinis, legetur in Anglico coram eis per Curiam *totum Recordum & Proceſſus Placiti*, quod pendet inter Partes, ac dilucidè exponetur eis Exitus Placiti, de cujus veritate Jurati illi Curiam certificabunt; quibus peractis, utraque Partium per ſe vel Conſiliarios ſuos, in Præſentiâ Curiæ, referet & manifeſtabit eiſdem Juratis omnes & ſingulas *Materias & Evidentias*, quibus eos docere ſe poſſe credit Veritatem Exitûs taliter placitati. Et tunc adducere poteſt utraque Pars coram eiſdem Juſticiariis & Juratis omnes & ſingulos Teſtes, quos pro Parte ſuâ ipſa producere velit, qui ſuper *ſancta Dei Evangelia*, per Juſticiarios onerati, teſtificabuntur omnia quæ cognoſcunt *probantia Veritatem Facti*, de quo Partes contendunt. Et ſi Neceſſitas exegerit, dividantur Teſtes hujuſmodi, donec ipſi depoſuerint quicquid Velint, ita quòd Dictum unius non docebit aut concitabit eorum alium ad conſimiliter teſtificandum. Quibus conſummatis, poſtquam Juratores illi deinde ad eorum Libitum, ſuper Veritate Exitûs hujuſmodi, Deliberatione quantam ipſi optabunt Colloquium habuerint, in *Cuſtodiâ Miniſtrorum Curiæ*, in Loco eis ad hoc Aſſignato, ne interim eos aliqui ſubornare valeant, revenient illi in Curiam, & certificabunt Juſticiarios ſuper Veritate Exitûs ſic juncti, in Præſentiâ Partium (ſi intereſſe velint) & maximè petentis. Quorum Juratorum *Dictum* per Leges Angliæ (a) *Veredictum* nuncupatur, & tunc ſecundum hujuſmodi Veredicti Qualitatem, Juſticiarii reddent & formabunt judicium ſuum. Tamen, ſi Pars altera, contra quam veredictum hujuſmodi prolatum eſt, conqueratur ſe per illud injuſtè eſſe gravatum, proſequi tunc poteſt Pars illa, verſus Juratores illos, & verſus Partem quæ obtinuit, Breve de Attinctâ, virtute cujus, ſi compertum fuerit per *Sacramentum* XXIV. *Hominum*, in Formâ prænotatâ retornatorum, electorum, & juratorum, qui multò majora habebunt Patrimonia, quàm Juratores primi, quòd iidem primi Juratores (15) *falſum fecerunt Sacramentum*, Corpora eorundem primorum Juratorum Priſonæ Regis committentur, Bona eorum confiſcabuntur, ac omnes Poſſeſſiones eorundem *in Manus Regis capientur*, Domus quoque eorum & Ædificia proſternentur, Boſci ſuccidentur, & Prata arabuntur, ipſi etiam Juratores primi ex tunc infames erunt, (16) *nec alicubi recipientur in Teſtimonium Veritatis*: & Pars, quæ ſuccubuit in priori Placito, reſtituetur ad omnia, quæ ipſa perdidit Occaſione ejus. Quis tunc (etſi immemor Salutis Animæ ſuæ fuerit) non Formidine tantæ Pœnæ, & Verecundiâ tantæ Infamiæ, Veritatem non diceret ſic juratus? Et ſi unus forſan tantus ſui Honoris prodigus eſſe non pepercerit, aliqui tamen Juratorum tantorum Famam ſuam non negligent, neque Bona & Poſſeſſiones ſuas taliter diſtrahi patientur, propriâ Culpâ ſuâ. *Nonne jam hic Ordo revelandi Veritatem, potior & efficacior eſt, quàm eſt Proceſſus, qua-*

(e) Tranſl. Cap. XXV. g. (a) Cap. XXVI. c. (15) Ibid. f(15). Ibid. h(16).

lem pariunt Civiles Leges? non hìc pereunt Cauſæ aut Jus alicujus, per Mortem aut ob Defectum Teſtium; non hìc producuntur Teſtes ignoti, conductitii, pauperes, vagi, inconſtantes, aut quorum Conditiones vel Malitiæ ignorantur. Vicini ſunt Teſtes iſti, de propriis vivere potentes, Famæ integræ, & Opinionis illæſæ, non per Partem in Curiam ducti, ſed per Officiarium nobilem & indifferentem electi, & coram Judice venire compulſi. Iſti omnia ſciunt, quæ Teſtes deponere nôrunt, & iſti Teſtium productorum agnoſcunt Conſtantias, Inconſtantiaſque & Famam. Quid ultra! verè nihil eſt, quod Veritatem dubii, de quo contendi poterit, detegere valebit, quod Juratoribus talibus latere quomodo libet poteſt aut ignorari, dummodo poſſibile ſit illud venire poſſe in Agnitionem humanam.

CAP. XXVII.

SED quomodo in Criminalibus Leges Angliæ ſcrutantur Veritatem etiam rimare perneceſſarium eſt, ut & in eis plenariè agnitâ ambarum Legum Formâ, quæ earum efficaciùs latentem revelat Veritatem certiùs agnoſcamus. Si Reus quiſpiam de (*a*) *Feloniâ aut Proditione in Angliâ* (*b*) *rettatus, Crimen ſuum coram Judicibus dedicat*, mox Vicecomes Comitatûs, ubi Facinus illud commiſſum eſt, venire faciet coram eiſdem Judicibus viginti quatuor probos & Legales Homines de Vicineto Villæ, ubi illud factum eſt, qui rettatum illum nullâ Affinitate attingunt, & quorum quilibet C. s. habeat Terræ & Reditûs, ad certificandum Judices illos ſuper Criminis illius Veritate. Quibus comparentibus, Rettatus ille eos *calumpniare* poteſt, eâdem Formâ, quâ in Actionibus realibus fieri debere ſuperiùs deſcribitur. Et inſuper Reus ipſe *in Favorem vitæ ſuæ* (17) *calumpniare poteſt* XXXV. *Homines, quos ipſe maximè formidat*, qui ad ejus Calumpniam cancellabuntur in Panello, aut Signis talibus notabuntur, quòd (ut Verbis Legis utar) illi ſuper eum non tranſibunt, licèt ipſe nullam Cauſam aſſignare ſciat Exceptionis ſeu Calumpniæ ſuæ. Quis tunc mori poſſet iniquè in Angliâ *pro Crimine*, cùm tot Juvamina habere ille poterit ob Favorem Vitæ ſuæ, & non niſi Vicini ejus, probi & fideles Homines, verſus quos ipſe nullam habet Materiam Exceptionis, eum condemnare poterunt? *Mallem reverà viginti facinoroſos Mortem Pietate evadere, quàm juſtum unum injuſtè condemnari.* Nec tamen Reum quempiam ſub hac Formâ, Reatûs ſui Pœnam evadere poſſe ſuſpicandum eſt, dum ejus Vita & Mores Timori deinceps erunt eis, qui eum ſic purgârunt a Crimine. In hoc equidem Proceſſu nihil eſt crudele, nihil inhumanum, nec lædi poterit innocens in Corpore aut Membris ſuis. Quare nec formidabit ille Calumpniam Inimicorum ejus, quia non torquebitur iſte ad Arbitrium ipſorum. Sub hac igitur Lege vivere quietum & ſecurum eſt. Judica ergo, *Princeps optime*, quæ Legum harum Tibi electiſſima foret, ſi Tu privatam ſpirares Vitam.

CAP. XXVIII.

CUI *Princeps*, Arduum ambiguumve, Cancellarie, non conſpicio, quod moroſum me titubantemve redderet in Electione Rei, quam interrogas. Nam quis non ſub Lege, quâ ſecuram ducere poſſet vitam, vivere potiùs eligeret, quàm ſub Lege tali, ſub quâ inermem, indefenſumque ſe ſemper redderet Sævitiæ omnium Inimicorum ejus? Verè tutus quiſquam eſſe non poterit in Corpore aut in Bonis, quem Inimicus ejus (in omni Cauſâ) convincere poterit Teſtibus duobus etiam ignotis, per ipſummet electis & productis. Et licèt quis Mortem, per Dicta eorum, ſubire non cogatur, parum tamen relevatur ipſe qui Mortem evaſit, Contractione Nervorum & Membrorum ſuorum, atque Corporis ejus Languore per-

(*a*) Tranſl. Cap. XXVII. b. (*b*) Ibid. a. (17) Ibid. d(17).

petuo.

petuo. Tali reverà Diſcrimini impellere poteſt Inimici Aſtutia omnem Hominem qui ſub Lege degit, quam tu jamdudum explicâſti. Sed tale Malum operari nequeunt Teſtes, qui Depoſitiones ſuas faciunt in Præſentiâ duodecim Fide dignorum Virorum facto Vicinorum, de quo agitur, & Circumſtantiis ejus; qui & noſcunt eorundem Teſtium mores, maximè ſi vicini ipſi fuerint, noſcunt etiam & ſi ipſi ſint Credulitate digni. Omnes etiam duodecim tales latere omnino non poterit, quicquid actum eſt, per aut inter Vicinos eorum. Noſco namque Ego certiùs, quæ jam aguntur hìc in Borro, ubi ſum modo converſatus, quàm quæ in Angliâ fiunt. Nec effugere poſſe puto Notitiam probi Viri ea, quæ aguntur, licèt quodammodo occultè, prope Domicilium ejus. Sed tamen cur prædicta Lex Angliæ, quæ tam frugi & optabilis eſt, non eſt toti Mundo communis, vehementer admiror.

CAP. XXIX.

CAncellarius. Juvenis (*a*) receſſiſti, *Princeps*, ab Angliâ, quo Tibi ignota eſt Diſpoſitio & Qualitas Terræ illius, quas ſi agnoveris, & cæterarum Regionum Emolumenta Qualitateſque eiſdem comparaveris, non admiraberis ea, quibus jam agitur Animus tuus. Anglia ſanè tam fertilis eſt, quòd Quantitate ad Quantitatem comparatâ, ipſa cæteras omnes quaſi Regiones exſuperat *ubertate Fructuum*; etiam ſuum ultrò ipſa profert, vix Induſtriâ Hominis concitata. Nam (*b*) *Agri* ejus, *Campi*, (*c*) *Saltus*, & Nemora, tantâ Fœcunditate germina ebulliunt, ut inculta illa ſæpe plus Commodi afferant Poſſeſſoribus ſuis, quàm arata, licèt fertiliſſima ipſa ſint *Segetum*, & (*d*) *Bladorum*. Includuntur quoque in Terrâ illâ *Paſturarum Arva*, *Foſſatis* & *Sepibus*, deſuper *Arboribus* plantatis, quibus muniuntur a Procellis & æſtu Solis eorum *Greges & Armenta*; ipſæque Paſturæ ut plurimùm irriguæ ſunt, quò infra earum Clauſtra recluſa Animalia Cuſtodiâ non egent per Diem, nec per Noctem. Nam ibi Lupi non ſunt, Urſi, nec Leones; quare de Nocte Oves eorum incuſtoditæ in Campis recumbunt, in (*e*) Caulis & Ovilibus, quibus impinguantur Terræ eorum. Unde Homines Patriæ illius vix operis Sudore gravantur, quare ſpiritu ipſi magis vivunt, ut fecerunt Patres antiqui, qui paſcere malebant Greges quàm Animi Quietem Agriculturæ ſollicitudine turbare. Ex quibus Homines Regionis iſtius (*f*) apti magis redduntur & diſpoſiti ad diſcernendum in Cauſis, quæ magni ſunt Examinis, quàm ſunt Viri, qui Telluris Operibus inhabitantes ex Ruris Familiaritate Mentis contrahunt Ruditatem. Regio etiam illa ita reſperſa, refertaque eſt *Poſſeſſoribus Terrarum* & Agrorum, quòd in eâ Villula tam parva reperiri non poterit, in quâ non eſt *Miles*, *Armiger*, vel (*g*) Pater familias, qualis ibidem (*h*) *Franklain* vulgariter nuncupatur, magnis ditatus Poſſeſſionibus; necnon liberè Tenentes alii, & (*i*) *Valecti* plurimi, ſuis Patrimoniis ſufficientes ad faciendum Juratam in Formâ prænotatâ. Sunt namque Valecti diverſi in Regione illâ, qui plus quàm ſexcenta Scuta per Annum expendere poſſunt; quo *Juratæ* ſuperiùs deſcriptæ ſæpiſſimè in Regione illâ fiunt, præſertim in ingentibus Cauſis, de Militibus, Armigeris & aliis, quorum Poſſeſſiones in univerſo excedunt duo millia ſcutorum per Annum. Quare cogitari nequit tales ſubornari poſſe, vèl perjurari velle, nedum ob Timorem Dei, ſed & ob Honorem ſuum conſervandum, & Vituperium & Dampnum quoque inde conſequutivum evitandum, etiam ne eorum Hæredes ipſorum lædantur Infamiâ. Taliter, *Fili Regis*, diſpoſita, inhabitataque non ſunt aliqua alia Mundi Regna.

Nam licèt in eis ſint Viri magnæ Potentiæ, magnarum Opum & Poſſeſſionum, non tamen eorum unus prope moratur ad alterum, ut in Angliâ

(*a*) Tranſl. Cap. XXIX. a. (*b*) Ibid. c. (*c*) Ibid. d. (*d*) Ibid. e.
(*e*) Ibid. h. (*f*) Ibid. i. Tull. Off. Cockm. verſ. Angl. p. 3. (*g*) Ibid. l.
(*h*) Ibid. m. (*i*) Ibid. o.

tanti morantur Viri, nec tanta, ut ibi, Hæreditatorum eſt Copia & Poſſidentium Terras.

Vix enim in Villatâ unâ *Regionum aliarum* reperiri poterit Vir unus Patrimonio ſufficiens, ut in Juratis ipſe ponatur. Nam rarò ibidem, aliqui præter Nobiles reperiuntur Poſſeſſores Agrorum, aliorumve Immobilium, extra Civitates & muratas Villas. *Nobiles* quoque ibidem Paſturarum Copiam non habent, & vineas colere aut Aratro Manus apponere Statui eorum non convenit, tamen in Vineis & Terris arabilibus conſiſtit Subſtantia Poſſeſſionum eorum, *exceptis* ſolùm Pratis quibuſdam adjacentibus *magnis Ripariis*, & Exceptis *Boſcis*, quorum Paſturæ communes ſunt Tenentibus & Vicinis ſuis. Quomodo tunc in Regionibus talibus Jurata fieri poterit ex duodecim probis Hominibus de Vicineto, ubi Factum aliquod in Judicio deducitur, cùm vicini dici non poterunt, qui tantâ Diſtantiâ diſtinguuntur? Verò remotos multùm a Facto duodecim Juratos ibidem eſſe oportebit, poſtquam Reus in Regionibus illis triginta quinque (ſine aſſignatâ Cauſâ) de propinquioribus calumniaverit. Quare, aut de multùm remotis a Facto, de quo contenditur, qui Veritatem Facti non agnoſcunt, in Regnis illis oportebit facere Juratam, aut de Pauperibus, quibus non eſt verecundia Infamiæ, nec Timor Jacturæ bonorum ſuorum, cùm ipſa non ſint; ipſi etiam, Ruſticitatis Ruditate obcæcati, Veritatis claritatem nequeunt intueri.

Non igitur mireris, *Princeps*, ſi Lex, quâ in Angliâ Veritas inquiritur, alias non pervagetur Nationes, ipſæ namque, ut Anglia, facere nequeunt ſufficientes conſimileſque Juratas.

CAP. XXX.

TUNC *Princeps. Comparationes odioſas eſſe* licèt dixerimus, Lex tamen Civiles, in Comparatione per Te factâ, omni ſe purgavit a Crimine: Quia, licèt ei Legem Angliæ tu prætuleris, Odium inde ipſa non meretur, dum neque eam neque Conditores ejus increpâſti; ſed ſolùm *Patriam*, ubi illa regit, Cauſam eſſe demonſtrâſti, quòd non tam obtabili Proceſſu, ut Lex Angliæ, ipſa in dubiis elicit Veritatem. Legem verò Angliæ, in Caſu jam per te diſputato, accommodatiorem eſſe Regno illi, quàm eſt Lex Civilis, ambigere non ſinimur, quò eam pro Civili commutare non appetimus: Sed tamen hæc Legis Angliæ Præeminentia ab alterius Crimine non evenit, ſolùm enim eam Angliæ Fertilitas ſic cauſavit.

CAP. XXXI.

SED, licèt non infimè, Cancellarie, nos delectet Forma, quâ Leges Angliæ in Contentionibus revelant Veritatem, tamen, an Modus ille ſacræ repugnet Scripturæ, vel non, paululum agitamur. Ait namque *Dominus* Phariſæis, Johannis VIII. "*In Lege veſtrâ ſcriptum eſt, quia duorum Hominum Teſtimonium verum eſt;*" & huic applaudens Dominus inquit, "*Ego ſum qui Teſtimonium perhibeo de me ipſo, & Teſtimonium perhibet de me, qui miſit me, Pater.*" Phariſæi quippe Judæi erant, unde idem erat dicere in Lege veſtrâ ſcriptum eſt, & in Lege Moſaicâ (quæ a Domino per Moſen Filiis Iſrael prolata fuit) ſcriptum eſt. Quare huic Legi contraire, Legi eſt Divinæ refragari, quo ſequitur, quòd Lex Angliæ, ſi ab hac Lege diſcedat, a Lege divinâ, cui reluctari non licet, ipſa diſcedit. Scribitur etiam, Matthæi XVIII. Quòd Dominus (loquens de Correctione fraternâ) inter alia ſic ait, "*Si autem non te audierit frater tuus, adhibe tecum adhuc unum aut duos, ut in Ore duorum vel trium ſtet omne Verbum.*" Si in Ore duorum vel trium, Dominus omne Verbum ſtatuerit, fruſtra plurium Hominum quæritur in Dubiis Veredictum. Nemo enim poteſt melius aut aliud Fundamentum ponere, quàm poſuit Dominus.

Hæc ſunt, Cancellarie, quæ me, de Legis Angliæ Proceſſu in Probationibus, aliquantulum conturbant. Quare, quid his reſpondendum eſt a Te, doceri depoſco.

CAP. XXXII.

CAncellarius. Non his, quibus turbaris, *Princeps*, contrariantur Leges Angliæ, licèt aliter quodammodo ipſæ in dubiis eliciant veritatem. Quid duorum Hominum Teſtimonio obeſt *Lex illa Generalis Concilii*, quâ cavetur, ut non niſi *duodecim Teſtium Depoſitione Cardinales* de Criminibus convincantur? Si verum eſt *duorum* Teſtimonium, a fortiori Teſtimonium *duodecim* verum judicari debet, dicente Juris Regulâ, " *Plus ſemper in ſe* " *continet quod eſt minus.*" Supererogationis Meritum promittebatur *Stabulario*, ſi plus quàm duos, quos recepit, Denarios, ipſe in vulnerati Curationem erogâſſet. Nonne plus quàm duos aut tres Teſtes producere oportebit quempiam, qui abſentem ſe fuiſſe probare nititur, Tempore Criminis ſibi impoſiti, quod per duos aut tres Teſtes Adverſarius ejus probavit, vel probare paratus eſt? Sic & qui Teſtes de Perjurio convincere ſatagit, multo illis plures producere neceſſe habet, quò non ſemper II. vel III. Hominum Teſtimonium verum eſſe judicabitur; ſed intelligenda eſt Lex illa, quòd *minore Teſtium Numero quàm* II. veritas in dubiis non debet exquiri, ut patet per *Bernardum* Extra. de Teſti. ca. licet in Gloſſâ ordinariâ, ubi ipſe aſſignat diverſos Caſus, in quibus per Leges, plures quàm tres oportet producere Teſtes, viz. in aliquibus eorum V. & in aliquibus ſeptem. Per duos etiam Teſtes Veritatem probari poſſe, cùm non aliter ipſa pateret, utique Leges Angliæ affirmant. Nam (18) ſi *quæ ſupra altum Mare* extra Corpus cujuſlibet Comitatûs Regni illius fiant, quæ poſtmodum in Placito *coram Admirallo* Angliæ deducantur, per Teſtes illa juxta Legum Angliæ Sanctiones probari debent. Conſimiliter quoque coram Conſtabulario & Mariſcallo Angliæ fieri ſolitum eſt de facto, quod in Regno alio actum eſt, dummodo ad Juriſdictionem (19) *Curiæ Conſtabularii* Cognitio ejus pertineat. Etiam & in Curiis quarundam Libertatum in Angliâ, ubi per (20) *Legem Mercatoriam* proceditur, probant per Teſtes Contractus inter Mercatores extra Regnum factos. Quia in Caſibus his non reperiuntur Vicini, per quorum Sacramenta Juratæ ex duodecim Hominibus fieri poſſunt, prout de Contractibus & aliis Caſibus infra Regnum Angliæ emergentibus, eſt fieri conſuetum. Similiter, ſi (*) carta, in quâ Teſtes nominantur, Deducatur in Curiâ Regis, Proceſſus tunc fiet erga Teſtes illos, ipſi quoque recognoſcent ſimul cum XII. Juratoribus per eorum Sacramenta utrum charta illa ſit factum ejus, cujus ſupponitur, annon. Quare, Legem, quâ Teſtibus Veritas extorquetur, Lex Angliæ non condemnat, maximè cùm *Neceſſitas* id depoſcat: quia & ſic faciunt ipſæ Leges Angliæ nedùm in Caſibus jam notatis, ſed etiam in quibuſdam Caſibus aliis, quos non expedit hic notare. Sed per Teſtes ſolùm Lex ipſa nunquam Litem dirimit, quæ per Juratam XII. Hominum decidi poterit, cùm ſit modus iſte ad veritatem eliciendam multo potior & efficacior, quàm eſt Forma aliquarum aliarum Legum Orbis, & remotior a Corruptionis & Subornationis periculo. Nec poteſt hæc procedendi Forma in Cauſâ aliquâ ob Defectum Teſtium deperire, neque Teſtium (ſi qui fuerint) Atteſtatio Effectum debitum non ſortiri, nec perjurari poſſunt duodecim Homines hujuſmodi, quin pro eorum Crimine ipſi acerbiſſimè puniantur, & nihilominus Pars, per eorum Depoſitionem gravata, Remedium debitum conſequetur: ac, non fient hæc per extraneorum aut ignotorum Hominum Arbitrium aut Dictamen, ſed per proborum Nobilium, & Fide dignorum, vicinorum Partibus, Sacramentum, quibus Partes illæ nullam habent Cauſam Calumpniæ aut Diffidentiæ de eorum Dicto. O quàm horrendum & deteſtabile Diſcrimen ſæpe accidit ex Formâ per Depoſitionem Teſtium procedendi! Nonne, ſi

(18) Tranſl. Cap. XXXII. e(18). (19) Ibid. g(19). (20) Ibid. h(20). (*) Ibid. i.

quis clandeſtinum contrahat Matrimonium, & poſtea coram Teſtibus Mulierem aliam ipſe (*a*) affidaverit, cum eâdem conſummare Matrimonium arctabitur in (*b*) *Foro contentioſo*, & poſtea in (*b*) *pœnitentiali Foro* judicabitur ipſe concumbere cum primâ, ſi debitè requiratur, & pœnitere debet quoties ex Actione propriâ concubuerit cum ſecundâ, licèt in utroque Foro Judex fuerit Homo unus & idem. Nonne in hoc Caſu, ut in *Job* ſcribitur, "*Perplexi ſunt Teſticuli Leviathan?*" Proh Pudor, verè perplexi ſunt; nam cum neutrâ Mulierum harum, neque cum aliâ contrahens iſte extunc concumbet, ſine Animadverſione in Foro Contendentium & Pœnitentium. Quale Malum, Inconveniens, aut Diſcrimen per Modum & Formam Proceſſûs Legis Angliæ impoſſibile eſt in Caſu aliquo evenire, etiam ſi *Leviathan* ipſe ea generare nitatur. Nonne vides jam, *Princeps clariſſime*, Leges Angliæ tanto magis clareſcere, quanto eiſdem Tu ampliùs reluctaris?

CAP. XXXIII.

PRinceps, Video, inquit, & eas inter totius Orbis Jura (in Caſu, quo tu jam ſudâſti) præfulgere conſidero, tamen Progenitorum meorum Angliæ Regum quoſdam audivimus, in Legibus ſuis minimè delectatos, (21) *ſatagentes proinde Leges Civiles ad Angliæ Regimen inducere*, & patrias Leges repudiare fuiſſe conatos: horum reverà Conſilium vehementer admiror.

CAP. XXXIV.

CAncellarius. Non admirareris, *Princeps*, ſi Cauſam hujus Conaminis Mente ſollicitâ pertractares. Audiſti namque ſuperiùs quomodo inter Leges Civiles præcipua Sententia eſt, maxima ſive Regula, illa quæ ſic canit, (22) *Quod Principi placuit, Legis habet vigorem*;" qualiter non ſanciunt Leges Angliæ, dum nedum *Regaliter*, ſed & *Politicè* Rex ejuſdem dominatur in Populum ſuum, quo ipſe in *Coronatione* ſuâ ad Legis ſuæ obſervantiam aſtringitur Sacramento, quod Reges quidam Angliæ ægrè ferentes, putantes proinde ſe non liberè dominari in Subditos, ut faciunt Reges Regaliter tantùm principantes, qui Lege Civili, & potiſſimè prædictâ Legis illius Maximâ regulant Plebem ſuam, quo ipſi ad eorum Libitum Jura mutant, novà condunt, Pœnas infligunt & Onera imponunt Subditis ſuis, propriis quoque Arbitriis, Contendentium, cùm velint, dirimunt Lites. Quare, moliti ſunt ipſi Progenitores Tui hoc Jugum Politicum objicere, ut conſimiliter & ipſi in ſubjectum Populum Regaliter tantùm dominari, ſed potiùs debacchari queant; non attendentes, quòd æqualis eſt utriuſque Regis Potentia, ut in prædicto *Tractatu de Naturâ Legis Naturæ* docetur, & quòd non Jugum, ſed Libertas eſt, Politicè regere Populum, Securitas quoque maxima nedum Plebi, ſed & ipſi Regi, Allevatio etiam non minima Solicitudinis ſuæ. Quæ ut Tibi apertiùs pateant, utriuſque Regiminis Experientiam percunctare, & Regimine tantùm Regali, qualiter Rex Franciæ principatur in Subditos ſuos, Exordium ſumito; deinde, a Regalis & Politici Regiminis Effectu, qualiter Rex Angliæ dominatur in ſibi ſubditos Populos, Experientiam quære.

(*a*) Tranſl. Cap. XXXII. k. (*b*) Ibid. i. k. (21) Cap. XXXIII. (21).
(22) Cap. XXXIV. a (22).

CAP.

CAP. XXXV.

REminiſcere, *Princeps divine*, qualiter Villas & Oppida Regni Franciæ Frugum opulentiſſima, dum ibidem peregrinabaris, conſpexiſti, Regis Terræ illius *Hominibus ad Arma, & eorum Equis* ita onuſta, ut vix in eorum aliquibus quàm magnis Oppidis Tu hoſpitari valebas: ubi ab Incolis didiciſti, Homines illos, licèt in Villâ unâ per Menſem aut duos perhendinaverint, nihil prorſus pro ſuis aut Equorum ſuorum Expenſis ſolviſſe, aut ſolvere velle; ſed, quod pejus eſt, (*a*) arctabant Incolas villarum & Oppidorum, in quæ deſcenderant, ſibi de vinis, Carnibus, & aliis, quibus indigebant, etiam carioribus Neceſſariis quàm ibi reperiebantur, a circumvicinis Villatis, ſuis propriis Sumptibus providere. Et ſi qui ſic facere renuebant, concitò Fuſtibus cæſi properè hoc agere compellebantur; ac demum conſumptis in Villâ unâ Victualibus, Focalibus, & Equorum præbendis, ad Villam aliam Homines illi properabant, eam conſimiliter devaſtando, nec Denarium unum pro aliquibus Neceſſariis ſuis, etiam aut Concubinarum ſuarum, quas in magnâ Copiâ ſecum ſemper vehebant, vel pro (*b*) ſotularibus, Caligis, & aliis hujuſmodi, uſque ad minimam earum Ligulam ſolverunt, ſed ſingulas ſuas qualeſcunque Expenſas Habitatores Villarum, ubi moras fecerunt, ſolvere coegerunt. Sicque & factum eſt in omnibus Villis & Oppidis non muratis totius Regionis illius, ut non ſit ibi Villula una expers de Calamitate iſtâ, quæ non ſemel aut bis in Anno, hac nephandâ Preſſurâ depiletur. Præterea non patitur Rex quenquam Regni ſui *Salem edere*, quem non emat ab ipſo Rege, Pretio, ejus ſolum Arbitrio, aſſeſſo. Et ſi inſulſum *Pauper* quivis mavult edere, quàm Salem exceſſivo Pretio comparare, mox compellitur ille, tantum de Sale Regis ad ejus Pretium emere, quantum congruet tot Perſonis quot ipſe in Domo ſuâ fovet. Inſuper omnes Regni illius Incolæ dant, omni Anno, Regi ſuo *quartam Partem omnium Vinorum* quæ ſibi accreſcunt; & omnis *Caupo quartum Denarium* Pretii Vinorum, quæ ipſe vendit; & ultra hæc, omnes *Villæ & Burgi* ſolvunt Regi annuatim ingentes Summas ſuper eos aſſeſſas, pro Stipendiis Hominum ad Arma; ſic quòd Armata Regis, quæ quàm magna ſemper eſt, paſcatur annuatim de Stipendiis ſuis, per Pauperes Villarum, Burgorum, & Civitatum Regni. Et ultra hæc, quælibet villa ſemper ſuſtinet (*c*) Sagittarios duos ad minus, & aliquæ plures in omni (*d*) Apparatu, & Abilimentis ſufficientibus ad ſerviendum Regi in Guerris ſuis, quoties ſibi libet eos ſummonere, quod & crebrò facit; ac iis non ponderatis maxima *Tallagia* alia ſunt omni Anno aſſeſſa ad opus Regis, ſuper quamlibet Villam ejuſdem Regni, de quibus non uno Anno ipſi alleviantur. Hiis & nonnullis aliis Calamitatibus Plebs illa laceſſita in miſeriâ non minimâ vivit, Aquam quotidie bibit, nec alium, niſi in ſolemnibus Feſtis, Plebeii guſtant Liquorem. *Froccis* ſive Collobitis de Canabo ad modum Panni Saccorum teguntur. (*e*) Panno de Lanâ, præterquam de Viliſſimâ, & hoc ſolùm in Tunicis ſuis ſubtus Froccas illas, non utuntur, neque (*f*) Caligis niſi ad Genua diſcooperto Reſiduo Tibiarum. Mulieres eorum nudipedes ſunt exceptis Diebus feſtis, *Carnes* non comedunt, Mares aut Fœminæ ibidem præter Lardum Baconis, quo impinguant Pulmentaria ſua in minimâ Quantitate. Carnes *aſſatas coctaſve* alias ipſi non guſtant, præterquam interdum de Inteſtinis & Capitibus Animalium pro Nobilibus & Mercatoribus occiſorum. Sed Gentes ad Arma comedunt Alitilia ſua, ita ut vix Ova eorum ipſis relinquantur, pro ſummis veſcenda Deliciis. Et ſi quid in Opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur, concitò ipſe ad Regis *Subſidium* plus vicinis ſuis cæteris oneratur, quo extunc convicinis cæteris ipſe æquabitur paupertate. Hæc, ni fallor, Forma eſt Statûs Gentis plebanæ Regionis illius, *Nobiles* tamen non ſic Exactionibus

(*a*) Tranſl. Cap. XXXV. c. (*b*) Ibid. d. (*c*) Ibid. g. (*d*) Ibid. h.
(*e*) Ibid. k. (*f*) Ibid. e.

opprimuntur. Sed ſi eorum aliquis calumniatus fuerit de Crimine, licèt per Inimicos ſuos, non ſemper coram Judice ordinario ipſe convocari ſolet: Sed quàm ſæpe in Regis Camerâ, & alibi in privato Loco, quandoque verò ſolùm per Internuncios, ipſe inde alloqui viſus eſt, & mox ut *Criminoſum* eum Principis Conſcientia, Relatu aliorum judicaverit, in *Sacco* poſitus, abſque Figurâ Judicii, per Præpoſiti Mariſcallorum miniſtros noctanter in Flumine projectus *ſubmergitur*, qualiter & mori audiviſti majorem multo numerum Hominum, quàm qui legitimo Proceſſu Juris convicti extiterunt. Sed tamen, quod Principi placuit (juxta Leges Civiles) Legis habet Vigorem. Etiam & alia *Enormia* hiis ſimilia, ac quædam hiis deteriora, dum in Franciâ, & prope Regnum illud converſatus es, audiſti, non alio, quàm Legis illius, Colore, deteſtabiliter, damnabiliterque perpetrata, quæ hìc inſerere, noſtrum nimium Dialogum protelaret: Quare, quid Effectus Legis Politicæ & Regalis, quam quidam Progenitorum Tuorum pro Lege hac Civili commutare niſi ſunt, operatus eſt in Regno Angliæ, a modo viſitemus, ut utràque Legum Experientiâ doctus, quæ earum Tibi eligibilior ſit, ex earum Effectibus elicere valeas, cum (ut ſuprà memoratur) dicat Philoſophus, quòd, " *Oppoſita, juxta ſe poſita, magis apparent.*"

CAP. XXXVI.

IN Regno Angliæ, *nullus* (*a*) *perbendinat in alterius Domo* invito Domino, ſi non in *Hoſpitiis publicis*, ubi tunc pro omnibus, quæ ibidem expendit, ipſe plenariè ſolvet ante ejus abinde Receſſum: neç impunè quiſque *Bona alterius capit ſine Voluntate Proprietarii eorundem*, neque in Regno illo præpeditur aliquis ſibi de Sale, aut quibuſcunque Mercimoniis aliis ad proprium Arbitrium, & de quocunque Venditore, providere. *Rex* tamen neceſſaria Domûs ſuæ, *per rationabile Pretium* juxta Conſtabulariorum Villarum Diſcretiones aſſidendum, invitis Poſſeſſoribus, per Officiarios ſuos capere poteſt: ſed Nihilominus Pretium illud in Manibus, vel ad Diem per majores officiarios Domûs ſuæ limitandum, *ſolvere* per Leges ſuas obnoxius eſt: quia nullius ſubditorum ſuorum Bona juxta Leges illas ipſe deripere poteſt ſine Satisfactione debitâ pro eiſdem. Neque Rex ibidem, per ſe, aut Miniſtros ſuos, *Tallagia* (*b*), *Subſidia* aut quævis Onera alia, imponit Legiis ſuis, aut Leges eorum mutat, vel novas condit, *ſine Conceſſione*, vel Aſſenſu totius Regni ſui, in *Parliamento* ſuo expreſſo. Quare Incola omnis Regni illius, Fructubus quos ſibi parit Terra ſua, & quos gignit Pecus ejus, Emolumentis quoque omnibus, quæ Induſtriâ propriâ vel alienâ, ipſe Terrâ Mariquę lucratur, ad Libitum proprium utitur, nullius præpeditus Injuriâ vel Rapinâ, quin ad minus inde debitas conſequitur (*c*) Emendas; unde Inhabitantes Terram illam locupletes ſunt, abundantes Auro & Argento, & cunctis neceſſariis Vitæ. Aquam ipſi non bibunt, niſi quòd ob Devotionis & Pœnitentiæ Zelum aliquando ab aliis Potubus ſe abſtinet, omni Genere *Carnium & Piſcium* ipſi in Copiâ veſcuntur, quibus Patria illa non modicè eſt referta, Pannis de Lanis bonis ipſi induuntur in omnibus *Operimentis* ſuis, etiam abundant in *Lectiſterniis*, & quolibet Suppellectili cui Lana congruit, in omnibus Domibus ſuis, necnon opulenti ipſi ſunt in omnibus (*d*) *Huſtilimentis* Domûs, neceſſariis Culturæ, & omnibus quæ ad quietam & felicem vitam exiguntur, ſecundum Status ſuos. Nec in Placitum ipſi ducuntur, niſi coram Judicibus ordinariis, ubi illi per Legis Terræ juſtè tractantur. Nec allocuti ſive implacitati ſunt de Mobilibus aut Poſſeſſionibus ſuis, vel arrettati de Crimine aliquo qualitercunque magno & enormi, niſi *ſecundum Leges Terræ illius, & coram Judicibus* antedictis. Et hii ſunt *Fructus*, quos parit Regimen *Politicum & Regale*: Ex quibus Tibi jam apparent Experientiæ Effectus Legis, quàm quidam Progenitorum Tuorum objicere conati ſunt.

(*a*) Tranſl. Cap. XXXVI. a. (*b*) Cap. XVII. c. (*c*) Cap. XXXVI. e. (*d*) Ibid. g.

Superiùs quoque Tibi apparent Effectus Legis alterius, quam tanto Zelo, Loco Legis istius, ipsi nisi sunt inducere, ut ex Fructibus earum Tu agnoscas eas. Et nonne Ambitio, Luxus, & Libido, quos prædicti Progenitores Tui Regni Bono præferebant, eos ad hoc Commercium concitabant? Considera igitur, *Princeps optime*, & jam alia quæ sequentur.

CAP. XXXVII.

SAnctus *Thomas* in Libro, quem Regi Cypri *de Regimine Principum* scripsit, dicit, "*Quòd* (*a*) *Rex datur propter Regnum, & non Regnum* "*propter Regem.*" Quò, omnis Potestas regia referri debet ad Bonum Regni sui, quod effectivè consistit in Defensione ejusdem ab exterorum Incursibus, & in Tuitione Regnicolarum, & Bonorum suorum ab Indigenarum Injuriis & Rapinis. Quare Rex, qui hæc peragere nequit, impotens est necessariò judicandus. Sed si ipse Passionibus propriis, aut Penuriâ ita oppressus est, quòd Manus suas cohibere nequit a Depilatione Subditorum suorum, quò ipsemet eos depauperat, nec vivere sinit & sustentari propriis Substantiis suis: quanto tunc impotentior ille judicandus est, quàm si eos defendere ipse non sufficeret erga aliorum Injurias? Reverà, Rex talis nedum impotens, sed & ipsa Impotentia, dicendus est, & non liber judicari potest, tantis Impotentiæ Nexubus vinculatus. E regione, Rex liber & potens est, qui Incolas suos erga Exteros & Indigenas, eorum quoque Bona & Facultates, nedum erga Vicinorum & Concivium Rapinas defendere sufficit, sed erga propriam Oppressionem & Rapinam, licèt sibi Passiones, Necessitatesque hujusmodi reluctentur. *Quis enim potentior, liberiorve esse potest, quàm qui non solùm alios, sed & seipsum sufficit debellare?* Quod potest, & semper facit Rex *Politicè* regens Populum suum. Quare Experientiæ Effectu Tibi constat, *Princeps*, Progenitores Tuos, qui sic Politicum Regimen abjicere satagerunt, non solùm in hoc non potuisse nanciscì Potentiam, quam optabant, videlicet ampliorem, sed & sui Bonum, similiter & Bonum Regni sui, per hoc, ipsi Discrimini exposuissent, & Periculo grandiori. Tamen hæc, quæ jam de Experientiæ Effectu practicata Potentiam Regis Regaliter tantùm præsidentis exprobrare videntur, non ex Legis suæ Defectu processerunt, sed ex Incuriâ, Negligentiâque taliter principantis. Quare, ipsa Dignitatem illam Potentiâ non minuunt, a Dignitate Regis Politicè regulantis, quos paris esse Potentiæ, in prædicto *Tractatu de Naturâ Legis Naturæ*, luculenter ostendi. Sed Potentiam Regis Regaliter tantùm principantis difficilioris esse Exercitii, ac minoris Securitatis sibi & Populo suo, illa clarissimè jam demonstrant, quò optabile non foret Regi prudenti Regimen Politicum pro tantùm Regali commutare. Unde & Sanctus *Thomas* supradictus optare censetur, ut omnia Mundi Regna Politicè regerentur.

CAP. XXXVIII.

TUNC *Princeps.* Parce, obsecro, Cancellarie, quòd te ad tantam a Proposito tuo Digressionem compuli Quæstionibus meis; mihi namque perutilia sunt, quæ hac Occasione exarâsti, licèt te parumper retardaverint a Metâ Intentionis Tuæ, ad quam, ut tu jam celeriùs properes, flagito, & primò, ut aliquos alios Casus, in quibus Legum Angliæ & Civilium discrepant Sententiæ, ut promisisti & cœpisti, mihi enarres.

(*a*) Transl. Cap. XXXVII. b.

CAP. XXXIX.

CAncellarius. Quoſdam Caſus alios, in quibus diſſentiunt Leges prædictæ, ut petis, *Princeps*, detegere conabor. Sed tamen, quæ Legum earum præſtantior ſit in Judiciis ſuis, non meo, ſed Arbitratui Tuo relinquam.

(23) *Prolem ante Matrimonium natam, ita ut poſt, legitimam Lex Civilis & ſuccedere facit in Hæreditate Parentum*; ſed Prolem, quam Matrimonium non parit, *ſuccedere non ſinit Lex Anglorum*, naturalem tantùm eam eſſe, & non legitimam proclamans. Civiliſtæ in Cuſu hoc Legem eorum extollunt, quia Incitamentum eam eſſe dicunt, quò Matrimonii Sacramento ceſſet Peccatum, per quod aliàs duorum Animæ interirent; præſumendum quoque eſſe dicunt, tales fuiſſe contrahentium Animos in primo eorum Concubitu, quales eſſe demonſtrat ſubſequens Sacramentum. Eccleſia etiam Fœtus hujuſmodi habet pro legitimis. Hæc, ni fallor, tria Fulcimenta ſunt majora, quibus ipſi approbant, defenduntque Legem ſuam. Ad quæ ſic reſpondent *Legis Angliæ periti*: primò dicunt, quòd *Peccatum primi Concubitûs* in Caſu propoſito *non purgatur per ſubſequens Matrimonium*, licèt ejus merito Delinquentium quodam modo minuatur Pœna. Dicunt etiam, quòd *Peccati illius conſcii tanto minùs inde pœnitent*, quo Leges Tranſgreſſoribus illis favere conſiderant: Quali etiam Conſideratione *procliviores ipſi redduntur ad committendum Peccatum*, per quod nedum Dei, ſed & Eccleſiæ Præcepta negligunt. Unde Lex illa nedum Delinquentium participat Culpâ, ſed & Legis bonæ Naturâ ipſa declinat; cùm Lex ſit *Sanctio ſancta, jubens honeſta, & prohibens contraria*: qualia ipſa non prohibet, *ſed potiùs ad inhoneſta Animos labentium invitat*. Nec vallari poteſt Lex iſta per hoc, quòd Eccleſia Fœtus hujuſmodi pro legitimis habet. Pia namque Mater illa in quam plurimis diſpenſat, quæ fieri ipſa non concedit; diſpenſativa enim laxavit Apoſtolus Virginitatis Fræna, quod conſulere noluit, cùm omnes ipſe voluerit, ut ſe Virgines permanſiſſe. Et abſit, ut Mater tanta a Filiis ſuis, in Caſu iſto, Pietatem ſuam cohiberet, dum ſæpe, ipſi etiam Legis hujus Civilis Fomento concitati, incidunt in Peccatum. Et per Matrimonium ſubſequens docetur Eccleſia, Contrahentes pœnitere de præterito, & de futuro per Matrimonium ſe velle cohibere. Sed *longè alium* in hoc Caſu *Lex Angliæ Effectum operatur, dum ipſa non concitat ad Peccatum, neque Peccantes fovet, ſed terret eos, & ne peccent, minatur Pœnas*: Carnis etenim Illicebræ Fomento non egent, egent verò Frænis, quia Irritamenta Carnis laſciva & quaſi infatigabilia ſunt. Et Homo, quum individuo perpetuari nequit, perpetuari naturaliter appetit in Specie ſuâ, quia omne quod vivit aſſimilari cupit Cauſæ primæ, quæ perpetua eſt & æterna. Unde ſit, quòd *plus delectatur Homo in Senſu Tactûs, quo ſervatur ſpecies ejus, quàm in Senſu Guſtûs*, quo conſervatur individuum. Quare *Noe*, ulciſcens in Filium qui ejus Pudenda revelavit, nepoti ſuo Filio Delinquentis maledixit, ut inde plùs cruciaretur Reus, quàm proprio poſſit Incommodo. Quare *Lex quæ vindicat in Progeniem Delinquentis pœnalùs prohibet Peccatum, quàm quæ ſolùm Delinquentem flagellat*. Ex quibus conſiderare licet, quanto Zelo Lex Angliæ illicitos proſequitur Concubitus, dum ex eis editam Prolem ipſa nedum judicat non eſſe legitimam, ſed & ſuccedere prohibet in Patrimonio Parentum. Num quid tunc, Lex iſta caſta non eſt? & non fortiùs, firmiùſque repellit Peccatum, quàm facit Lex prædicta Civilis, quæ citò, & quaſi inultum Luxuriæ Crimen remittit?

(23) Tranſl. Cap. XXXIX. a (23).

CAP.

CAP. XL.

PRæterea, *Leges Civiles* dicunt, " *Filium naturalem tuum esse Filium* " *Populi*" De quo Metricus quidam sic ait,

Cui Pater est Populus, Pater est sibi nullus & omnis:
Cui Pater est Populus, non habet ipse Patrem.

Et dum Proles talis Patrem non habuit Tempore Nativitatis suæ, quomodo ex post facto ipse Patrem nanciscì poterit, Natura non novit. Quo, si ex Fornicatoribus duobus Mulier una Filios peperit duos, quam postea unus ex Concubinariis illis ducat in Uxorem, quis ex Filiis hiis duobus per Matrimonium illud legitimatur? *Opinio suadere potest, sed Ratio reperire nequit*, dum ambo Filii illi Populi Fœtus judicati semel Parentes ignorabant. Inconsonum propterea videretur, quòd in Matrimonio illo extunc ab eadem Muliere natus, cujus Generatio ignorari non poterit, expers esset Hæreditatis, & Filius nescius Genitoris sui succederet Patri & Matri ejus, maximè infra Regnum *Angliæ*, ubi *Filius senior solus succedit in Hæreditate paternâ*; & non minus incongruum esse sentiret Arbiter æquus, si Filius ex Stupro æqualiter participaret cum Filio ex legitimo Thoro Hæreditatem, quæ Jure Civili inter masculos dividenda est. Nam *Sanctus Augustinus*, XVI. *Libro de Civitate Dei*, sic scribit. *Abraham omnem Censum suum dedit Isaac Filio suo, Filiis autem Concubinarum dedit Dationes:*" Ex quò videtur innui, quòd Spuriis non debetur Hæreditas, sed Victûs necessitas. Hæc ille. Sub Nomine verò Spurii denotat *Augustinus*, omnem Fœtum illegitimum, qualiter & sæpiùs facit Scriptura sacra, quæ Neminem vocat Bastardum. Ecce Differentiam non minimam sentit *Augustinus*, sentit & *Abraham* inter Successionem Spurii & Filii ex legitimo Concubitu. Cæterum, omnes Filios illegitimos reprehendit *Scriptura sacra* sub Metaphorâ hac, dicens, " *Spuria Vitulamina non dabunt Radices altas, nec stabile Funda-* " *mentum collocabunt*," Sapientiæ IV. Reprehendit & Ecclesia, quæ eos a sacris repellit Ordinibus, & si cum tali dispensaverit, non eum tamen permittit Dignitate præesse in Ecclesiâ Dei. Congruit idcirco Legi Hominum, in Successionis Beneficio minuere, quos Ecclesia indignos judicat sacro Ordine, & quos ipsa repellit ab omni Prælatiâ: ipsos etiam, quos Scriptura sacra in Natalibus minoratos judicat a legitimè procreatis. *Gedeon* autem, *Virorum fortissimus*, LXX. Filios in Matrimonio legitur procreâsse, & non nisi unum solum habuisse ex Concubinâ; Filius tamen ipse Concubinæ omnes Filios illos legitimos nequiter peremit, excepto uno solo, Judicum IX. Quò, in Notho uno plus Malitiæ fuisse deprehenditur, quàm in Filiis legitimis LXIX. Tritum etenim Proverbium est, (24) *Si bonus est Bastardus, hoc ei venit a Casu, videlicet Gratiâ speciali, si autem malus ipse fuerit, hoc sibi accidit a Naturâ.* Corruptionem namque & maculam quandam censetur illegitimus Partus contrahere a Peccato Genitorum suorum sine Culpâ ejus, ut maximam nos contraximus omnes a Crimine primorum Parentum, licèt non tantam: aliam tamen Nothi quàm legitimi contrahunt Maculam ex Geniturâ suâ, eorum namque Generationem mutua utriusque Parentis Libido culpabilis operatur, qualiter in legitimis, castisque Amplexibus Conjugatorum ipsa non solet debacchari, mutuum sane & commune est Peccatum taliter Fornicantium, Quò, primo similatum Peccato magis sevit in Fœtum, quàm Peccatum aliter, solitariéque Peccantium, ut exinde Natus potiùs Peccati Filius dici mereatur, quàm Filius Peccatorum. Quare *Sapientiæ Liber* Generationes has duas distinguens de Generatione legitimâ sic affatur, " *O quàm pulchra est casta Generatio cum claritate!* " *Immortalis est enim Memoria illius, quoniam apud Deum nota est & apud* " *Homines.*" Altera verò non est nota apud Homines, quò Filii ex eâ

(24) Transl. Cap. XL. g (24).

nati, Filii Populi nominantur. De Generatione utique illâ alterâ, Liber ille dicit, " *Ex iniquis omnes Filii qui naſcuntur, Teſtes ſunt Nequitiæ ad-* " *verſus Parentes ſuos, in Interrogatione ſua.*" (Sapientiæ eodem IV. cap.) Interrogati etenim de Parentibus ſuis, eorum ipſi revelant Peccatum, ut Filius *Noe* nequam revelavit Pudenda Patris ſui. Creditur idcirco, cæcum illum Natum, de quo Phariſæi, Johannis IX. dixerunt " Tu in Peccatis " natus es totus", fuiſſe Baſtardum, qui naſcitur totaliter ex Peccato; & dum ſubditur, " Et tu doces nos?" videtur eos intellexiſſe, Baſtardum non ut legitimum in Naturalibus eſſe diſpoſitum ad Scientiam & Doctrinam. Non igitur bene dividit Lex illa, quæ Baſtardos a Nativitate, & legitimos parificat in Hæreditate paternâ, cùm eos diſpares judicet Eccleſia in Hæreditate Dei; ſimiliter & diſtinguat ſacra Scriptura in Formâ prænotatâ, dividatque natura in Donis ſuis, ſignans naturales tantùm nævo quaſi naturali quodam, licèt latente in Animis ſuis. Quam igitur Legum iſtarum, *Anglicarum*, viz. & *Civilium*, in Caſu hoc, Tu *Princeps illuſtriſſime*, amplecteris & judicas præferendam?

CAP. XLI.

PRinceps. Revera *eam, quæ fortiùs a Regno Peccatum eiiminat, & firmiùs in eo Virtutem conſervat.* Arbitror etiam illos in Legis humanæ Beneficiis minorandos, quos Lex divina indigniores conſiderat, & quos poſtponit Eccleſia in Beneficiis ſuis, Naturâ quoque procliviores judicat ad peccandum. Cancellarius. Rectè æſtimo Te ſentire, quare & Caſus alios memorabor, in quibus diſcrepant hæ Leges duæ.

CAP. XLII.

LEges Civiles ſanciunt, quod (25) " *Partus ſemper ſequitur Ventrem.*" Ut, ſi Mulier ſervilis Conditionis nubat Viro Conditionis liberæ, Proles eorum Servus erit: Et è converſo, Servus maritatus Liberæ, non niſi Liberos gignit. Sed Lex Angliæ *nunquam Matris, ſed ſemper Patris Conditionem imitari Partum judicat.* Ut ex Liberâ, etiam ex Nativâ, non niſi Liberum Liber generet; & non niſi Servum in Matrimonio procreare poteſt Servus. Quæ, putas, Legum harum melior eſt in Sententiis ſuis? Crudelis eſt Lex, quæ Liberi Prolem ſine Culpâ ſubdit Servituti. Nec minus crudelis cenſetur, quæ Liberæ Sobolem ſine Merito redigit in Servitutem. *Legiſtæ* verò dicunt, Leges Civiles prævalere in hiis Judiciis ſuis. Nam dicunt, quòd " *non poteſt Arbor mala Fructus bonos facere, neque* " *Arbor bona Fructus malos facere.*" Ac omnis Legis Sententia eſt, quòd Plantatio quælibet cedit Solo quo inſeritur; certior quoque multò eſt Partus, quæ eum fuderunt viſcera, quàm quis eum Pater procreavit. Ad hæc *Legis Angliæ Conſulti* dicunt, quòd " *Partus ex legitimo Thoro non cer-* " *tiùs noſcit Matrem quàm Genitorem ſuum.*" Nam ambæ Leges, quæ jam contendunt, uniformiter dicunt, quòd " *ipſe eſt Pater, quem Nuptiæ de-* " *monſtrant.*" Nunquid tunc magis eſt conveniens, ut Filii Conditio ad Patris potiùs quàm ad Matris Conditionem referatur, cùm de Conjugatis dixerat *Adam*, " *Erunt ipſi duo in Carne unâ*;" quod *Dominus* exponens in *Evangelio* ait, " *Jam non ſunt duo, ſed una Caro.*" Et cùm Maſculinum concipiat Fœmininum, ad maſculinum quod digniùs eſt referri debet tota Caro ſic facta una. Quare *Adam* & *Evam* vocavit Dominus, *non Evam*, ſed quia Caro una ipſi erant, ambos eos vocavit ipſe nomine Viri, videlicet, *Adam*, ut patet *Geneſis* quinto Capitulo. Ipſæ quoque Civiles Leges dicunt, quòd Mulieres ſemper coruſcant Radiis Maritorum ſuorum. Unde C. *Qui Profeſſione ſe excuſant*, Libro nono, L. fi. Textus ſic loquitur (26) " *Mulieres Honore Maritorum erigimus,*" & Genere nobilitamus, & Forum

(25) Tranſl. Cap. XLII. a (25). (26) Ibid. h (26).

ex eorum Perſonâ ſtatuimus, & Domicilium mutamus. Sin autem " *Mi-* " *noris Ordinis Virum poſtea ſortitæ, priore Dignitate privatæ, poſterioris* " *Mariti conſequantur Conditionem & Domicilium.*" Et cùm Nomen Patris, & non Matris, gerat Proles omnis, & maximè maſculina, unde tunc provenire poterit, quòd Filius, Ratione Matris, amitteret Honorem, Conditionemve Patris ſui mutaret, cujus tamen Nomen ipſe retinebit, præſertim dum Honore Patris ejuſdem ac Conditione reſplendeat Mater ejus, & dum Viri Honor vel Conditio nunquam per Uxoris Vitium denigratur. Crudelis nempe cenſeretur Lex, quæ, ſine Cauſâ, Filium Liberi Servituti committit; & Terram, pro quâ Liber ille, innocens a Crimine, ſudavit innocentis Filii ſui Titulo, non ſudanti tradet extraneo poſſidendam, ac Patris Nomen etiam Filii Servitutis Notâ commaculat. Crudelis etiam neceſſariò judicabitur Lex, quæ Servitutem augmentat, & minuit Libertatem. Nam *pro eâ Natura ſemper implorat humana.* Quia, ab Homine, & pro Vitio, introducta eſt Servitus. Sed Libertas a Deo Hominis eſt indita Naturæ. Quare ipſa ab Homine ſublata ſemper redire gliſcit, ut facit omne quod Libertate naturali privatur. Quò ipſe & crudelis judicandus eſt, qui Libertati non favet. Hæc conſiderantia *Angliæ Jura* in Omni Caſu Libertati dant Favorem. Et licèt *Jura illa judicent eum Servum, quem Servus in Conjugio ex Liberâ procreavit*, non per hoc Jura illa rigida crudeliave ſentiri poterunt. Nam Mulier, quæ Conjugio Servo ſe ſubjecit, facta ei Caro una, quo ipſa, ut dicunt Leges ſupraſcriptæ, ejus conſequitur Conditionem, & proprio Arbitrio ſe fecit Ancillam, ſed potiùs Servam, nullatenus a Lege coacta, qualiter & faciunt qui ſe Servos reddunt in Curiis Regum, vel in Servitutem ſe vendunt, nullatenus ad hoc compulſi. Quo modo tunc Liberum ſancire poſſunt Leges Filium illum; quem mater talis taliter eſt enixa? Nunquam enim ſic ſubjectus eſt Vir Uxori, *licèt maxima Domina ipſe fuerit*, ut Subjecta eſt Libera hæc Servo, quem ipſa facit Dominum ejus, dicente *Domino* Uxori omni, " *Eris ſub* " *Poteſtate Viri, & ipſe dominabitur tibi.*" Et quid eſt, quod dicunt Legiſtæ illi de Fructu Arboris bonæ vel malæ, nonne conditionis Liberæ vel Servilis eſt Uxor omnis, qualis eſt Maritus ejus? Et *in cujus Solo plantavit Maritus, dum Uxor ejus eſt ſibi Caro una? nonne in proprio?* Quid ſi Surculum dulcis Naturæ inſeverit ipſe Stipiti Arboris acerbæ, dummodo Arbor illa ejus eſt, *Nonne Fructus* (licèt ex Stipite redolent) *ſemper ſint Fructus ejus*; ſic ex Muliere genita Proles Mariti eſt Progenies, fuerit mater Libera vel Ancilla. Sanciunt tamen Leges Angliæ, quòd *Dominus Nativæ a Libero in Matrimonium ſumptæ ipſo inconſulto*, cùm eam repudiare nequeat, dicente Evangelio, " *Quos Deus conjunxit Homo non ſeparet*," recuperabit verſus Liberum illum omne Damnum quod ipſe ſuſtinuit Ratione deperditi Servitii, & amiſſæ Ancillæ. Hæc jam, ut æſtimo, eſt Summa & Forma Legis Angliæ, in Caſu jam enarrato. Quid igitur jam Tibi videtur, *Princeps*, in Caſu iſto? & quæ Legum prædictarum præſtantior aut eligibilior a Te judicatur?

CAP. XLIII.

PRinceps. Anglorum Legem in hoc Caſu Romanorum Legi præſtare, dubitare nos Ratio non permittit. Et optatior mihi ſemper eſt Lex, quæ Favorem potiùs quàm Rigorem Partibus adminiſtrat. Recolo namque illius Juris Regulam quæ ſic dicit, (*a*) " *Odia perſtringi, & Favores convenit* " *ampliari.*" Cancellarius, Et bene quidem. Alium adhuc Caſum Tibi referam, Princeps, in quo concertant Leges iſtæ, & non multùm poſtea tunc deſiſtam; ne oneroſum Tibi ſit tantis ſollicitari Sciſmatibus, etiam ne in Faſtidium Tibi veniat Diſceptatio mea diutiùs protelata.

(*a*) Tranſl. Cap. XLIII. b.

CAP. XLIV.

LEges Civiles *imò Puberum Tutelas* (27) *proximis de eorum Sanguine committunt*, agnati fuerint ſeu cognati, unicuique videlicet ſecundum Gradum & Ordinem, quo in Hæreditate Pupilli ſucceſſurus eſt. Et Ratio Legis hujus eſt, quia nullus teneriùs favorabiliùsve Infantem alere ſataget quàm proximus de Sanguine ejus. Tamen longè aliter *de Impuberum Cuſtodiâ* ſtatuunt Leges Angliæ. Nam ibidem, " *Si Hæreditas, quæ tenetur in* " *Socagio, deſcendat Impuberi ab aliquo Agnatorum ſuorum, non erit Impubes* " *ille ſub Cuſtodiâ alicujus Agnatorum ejus, ſed per ipſos Cognatos, videlicet* " *Conſanguineos* (28) *ex Parte Matris ipſe regetur.*" Et ſi ex Parte Cognatorum Hæreditas ſibi deſcenderit, Pupillus ille cum Hæreditate ſuâ per proximum Agnatum, & non cognatum ejus cuſtodietur, quouſque ipſe fuerit adultus. Nam Leges illæ dicunt, quòd " *committere Tutelam Infan-* " *tis illi qui eſt ei proximè ſucceſſurus, eſt quaſi Agnum committere Lupo ad* " *devorandam.*" Sed ſi Hæreditas illa, non in Socagio, ſed teneatur per (*a*) *Servitium militare*, tunc per Leges terræ illius, Infans ipſe & Hæreditas ejus non per Agnatos neque Cognatos, ſed *per Dominum Feodi illius cuſtodientur, quouſque ipſe fuerit ætatis viginti & unius Annorum.* Quis, putas, Infantem talem, (29) in *Actibus bellicis*, quos facere, Ratione Tenuræ ſuæ, ipſe aſtringitur Domino Feodi ſui, meliùs inſtruere poterit aut velit, quàm Dominus ille, cui ab eo Servitium tale debetur? Et qui majoris Potentiæ & Honoris æſtimatur, quàm ſunt alii Amici propinqui Tenentis ſui. Ipſe namque, ut ſibi ab eodem Tenente meliùs ſerviatur, diligentem Curam adhibebit, & meliùs in his eum erudire expertus eſſe cenſetur, quàm reliqui Amici Juvenis, rudes forſan, & Armorum inexperti, maximè ſi non magnum fuerit Patrimonium ejus. Et quod utilius eſt Infanti, qui Vitam & omnia ſua Periculis bellicis exponet in Servitio Domini ſui Ratione Tenuræ ſuæ, quàm in Militiâ Actubuſque bellicis imbui, dum minor eſt, cùm Actus hujuſmodi ipſe in ætate maturâ declinare non poterit? Et reverà non minimè erit Regno accommodum, ut Incolæ ejus in Armis ſint experti. Nam, ut dicit Philoſophus, " *Audaciter quilibet* " *facit, quod ſe ſcire ipſe non diffidit.*" Nunquid tunc Legem hanc, Tu approbas, *Fili Regis*, & collaudas ſuper Legem alteram jam deſcriptam?

CAP. XLV.

PRinceps. Immò, Cancellarie, Legem hanc, pluſquàm alteram, ego laudo. Nam in ejus Parte primâ, quam Tu notâſti, cautè magis, quàm Civilis, ipſa providet Securitati Pupilli. Sed tamen in ejus Parte ſecundâ, multo magis ego delector. Nam ab eâ eſt, quòd in Angliâ, Nobilium Progenies de facili degenerari non poteſt, ſed *Probitate* potiùs, (*) *Strenuitate*, & (*b*) *Morum Honeſtate* Anteceſſores ſuos ipſa tranſcendet, dum, in altiori, nobiliorique Curiâ, quàm in Domo Parentum, illa ſit imbuta, licèt in Domo conſimili forſan Parentes ejus educati erant: Quia conſimilis adhuc non erat Domus Parentum illorum Domui Dominorum, quibus ipſi Parentes & ipſi Infantes ſervierunt. Principes quoque Regni ſub hac Lege regulati, ſimiliter & Domini alii a Rege immediatè tenentes non poſſunt de levi in Laſciviam, Ruditatemve labi, cùm in Pueritiâ, dum Orphani fuerint ipſi, (*c*) in Domo Regiâ nutriuntur. Quare non infimè Domûs Regiæ Opulentiam, Magnitudinemque collaudo, dum in eâ (*d*) Gymnaſium ſupremum ſit Nobilitatis Regni; Schola quoque Strenuitatis, Probitatis, & Morum quibus Regnum honoratur, & floret, ac contra

(27) Tranſl. Cap. XLIV. b(27). (28) Ibid. d(28). (*a*) Ibid. e. (29) Ibid. f(29).
(*) Cap. XLV. a. (*b*) Ibid. b. (*c*) Ibid. d. (*d*) Ibid. e.

irruentes

irruentes ſecuratur, etiam Formido ipſa erit Inimicis & Amicis Regni. Hoc reverà Bonum accidiſſe non potuiſſet Regno illi, ſi Nobilium Filii, Orphani, & Pupilli, per pauperes Amicos Parentum ſuorum nutrirentur. Nec Regni Bono officere poteſt, licèt Burgenſium Filii & aliorum liberè tenentium, qui in Socagio tenent Tenementa ſua, quo ipſi ad Militiam non aſtringuntur, in Domo conſimilium Amicorum ſuorum educantur, ut perſpicuè conſideranti lucidè apparere poteſt.

CAP. XLVI.

TUNC Cancellarius. Sunt & alii Caſus nonnulli, in quibus differunt Leges antedictæ. Ut quia Leges Civiles judicant *Furtum manifeſtum*, per Redditionem Quadrupli; & *Furtum non manifeſtum*, per Dupli Recompenſationem, expiari. Sed Leges Angliæ *neutrum Facinorum illorum mitiùs, quàm Committentis Morte puniri permittunt*; dum modo ablati Valor (30) *duodecim Denariorum Valorem excedat.* Item (*a*) *Libertinum* ingratum Leges Civiles in priſtinam redigunt Servitutem: Sed Leges Angliæ *ſemel manumiſſum ſemper Liberum judicant*, gratum & ingratum. Alii quoque ſunt Caſus hujuſcemodi non pauci, quos jam Studio Brevitatis prætereo. Et neque in hiis duobus Caſibus, prædictarum Legum Præſtantias ego jam deſcribo, cùm non magnæ ſint Indaginis eorum Qualitates. Nec diffido Ingenii Tui Solertiam eas ſufficienter poſſe rimari.

CAP. XLVII.

PRinceps. Nec expedit, Cancellarie, in hiis multùm ſudare. Quia licèt in Angliâ, Fures clandeſtini & manifeſti paſſim Morte plectantur, non ceſſant ipſi ibidem omninò prædari, ac ſi Pœnam tantam illi minimè formidarent. Quanto tunc minùs *ſe abſtinerent a Crimine, ſi Pœnam præviderent mitiorem?* Et abſit, a Servitute ſemel evaſum ſemper deinde ſub minis tremere Servitutis, maximè Ingratitudinis Colore, cùm Ingratitudinum Species vix poterint, præ Multitudine, numerari, & *humana Natura, in Libertatis Cauſâ, Favorem ſemper, magis quàm in Cauſis aliis, deprecetur.*

Sed jam, Cancellarie, obnixè te imploro, ut amodo amiſsâ plurium Caſuum hujuſmodi Examinatione, mihi edicas, quare Leges Angliæ, tam bonæ, frugi, & optabiles, (31) *in Univerſitatibus* non docentur, ut Civiles ſimiliter & Canonum Leges; & quare in eiſdem non datur *Baccalareatûs & Doctoratûs* Gradus, ut in aliis Facultatibus & Scientiis eſt dari conſuetum.

CAP. XLVIII.

CAncellarius. In Univerſitatibus Angliæ non docentur Scientiæ niſi in *Latinâ* Linguâ; Et Leges Terræ illius in triplici Linguâ addiſcuntur, viz. *Anglicâ, Gallicâ, & Latinâ. Anglicâ*, quia inter Anglos Lex illa maximè inolevit. (32) *Gallicâ*, quia poſtquam Galli, *Duce Wilhelmo Angliæ Conqueſtore*, Terram illam optinuerunt, non permiſerunt ipſi eorum Advocatos placitare Cauſas ſuas, niſi in Linguâ quàm ipſi noverunt, qualiter & faciunt omnes Advocati in Franciâ, etiam in Curiâ Parliamenti ibidem. Conſimiliter Gallici poſt eorum Adventum in Angliam, Ratiocinia de eorum Proventibus non receperunt niſi in proprio Idiomate, *ne ipſi inde deciperentur. Venari* etiam, & Jocos alios exercere, ut *Talorum & Pilarum Ludos*, non niſi in propriâ Linguâ delectabantur. Quò, & Anglici, ex frequenti eorum in talibus Comitivâ, Habitum talem contraxerunt, quòd

(30) Tranſl. Cap. XLVI. b (30). (*a*) Ibid. c. (31) Cap. XLVII. b (31).
(32) Cap. XLVIII. c (32).

hucuſque ipſi in Ludis hujuſmodi, & Compotis, Linguam loquuntur Gallicanam, & placitare in eâdem Linguâ ſoliti fuerunt, quouſque Mos ille, Vigore cujuſdam Statuti, quàm plurimum reſtrictus eſt; tamen in toto, hucuſque aboleri non potuit; tum, propter *Terminos* quoſdam, quos plus propriè Placitantes, in Gallico quàm in Anglico, exprimunt; tum quia *Declarationes, ſuper Brevia Originalia*, tam convenienter ad Naturam Brevium illorum pronunciari nequeunt, ut in Gallicâ, ſub quali Sermone *Declarationum hujuſmodi Formulæ addiſcuntur*. Reportantur etiam *ea, quæ* in Curiis Regiis *placitantur, diſputantur, & judicantur*, ac in Libros ad futurorum Eruditionem rediguntur, in Sermone ſemper Gallico. Quàm plurima etiam *Statuta* Regni illius in Gallico conſcribuntur. Unde accidit, quòd Lingua, jam in Franciâ Vulgaris, non concordat aut conſimilis eſt Gallico inter Legis peritos Angliæ uſitato, ſed vulgariter quâdam Ruditate corrupta. Quod fieri non accidit in Sermone Gallico infra Angliam uſitato, cùm ſit Sermo ille ibidem ſæpiùs ſcriptus quàm locutus. Sub tertiâ verò Linguarum prædictarum, viz. ſub *Latinâ*, omnia *Brevia Originalia & judicialia*, ſimiliter & omnia *Recorda Placitorum* in Curiis Regum, etiam & quædam *Statuta*, ſcribuntur. Quare, dum Leges Angliæ in his tribus addiſcuntur Linguis, ipſæ in Univerſitatibus, ubi ſolùm exercetur Lingua Latina, convenienter erudiri non poterunt, aut ſtuderi. Leges tamen illæ, in quodam Studio publico, pro illarum Apprehenſione omni Univerſitate convenientiore & proniore, docentur & addiſcuntur. *Studium* namque *iſtud ſitum eſt prope Curiam Regis*, ubi Leges illæ placitantur, diſputantur, & Judicia per eaſdem redduntur per Judices, viros graves, Senes, in Legibus illis peritos & graduatos; quò in Curiis illis, ad quas omni Die placitabili (*) confluunt Studentes in Legibus illis, quaſi in Scholis publicis, Leges illæ leguntur & docentur. Situatur etiam Studium illud *inter Locum Curiarum illarum* & Civitatem *London*, quæ de omnibus neceſſariis opulentiſſima eſt omnium Civitatum & Oppidorum Regni illius. Nec in Civitate illâ, ubi Confluentium Turba Studentium Quietem perturbare poſſit, ſitum eſt Studium iſtud; ſed ſeorſim parumper, in Civitatis illius Suburbio, & propiùs Curiis prædictis, ut ad eas, ſine Fatigationis Incommodo, Studentes indies ad Libitum accedere valeant.

CAP. XLIX.

SED ut Tibi conſtet, *Princeps*, hujus Studii Forma & Imago, illam ut valeo, jam deſcribam. Sunt namque in eo *decem Hoſpitia minora*, & quandoque verò plura, quæ nominantur *Hoſpitia Cancellariæ*. Ad quorum quodlibet pertinent centum Studentes ad minus, & ad aliqua eorum major in multo Numerus, licèt non omnes ſemper in eis ſimul conveniant. Studentes etenim iſti, pro eorum parte majori, Juvenes ſunt, *Originalia*, & quaſi Legis Elementa addiſcentes, qui in illis proficientes, ut ipſi matureſcunt, ad *majora Hoſpitia* Studii illius, quæ *Hoſpitia Curiæ* appellantur, aſſumuntur. Quorum majorum *quatuor* ſunt in Numero, & ad minimum eorum pertinent in Formâ prænotatâ ducenti Studentes aut propè. In hiis enim majoribus Hoſpitiis, nequaquam poteſt Studens aliquis ſuſtentari minoribus Expenſis in Anno, quàm octoginta Scutorum, & ſi Servientem ſibi ipſe ibidem habuerit, ut eorum habet Pluralitas, tanto tunc majores ipſe ſuſtinebit Expenſas. Occaſione verò Sumptuum hujuſmodi, ipſi (*a*) Nobilium Filii tantum in Hoſpitiis illis Leges addiſcunt. Cùm Pauperes & Vulgares, pro Filiorum ſuorum Exhibitione, tantos Sumptus nequeant ſufferre. Et Mercatores rarò cupiant tantis Oneribus annuis attenuare Mercandiſas ſuas. Quò fit, ut vix doctus in Legibus illis reperiatur in Regno, qui non ſit Nobilis, & de Nobilium Genere egreſſus. Unde magis aliis conſimilis Statûs Hominibus, ipſi Nobilitatem curant, & Conſervationem Honoris & Famæ ſuæ. In his reverà *Hoſpitiis majoribus*, etiam & *mino-*

(*) Tranſl. Cap. XLVIII. i. (*a*) Cap. XLIX. c.

ribus, ultra Studium Legum, eſt quaſi Gymnaſium omnium Morum qui Nobiles decent. Ibi *cantare* ipſi addiſcunt, ſimiliter & ſe exercent in Omni Genere Harmoniæ. Ibi etiam *tripudiare*, ac *Jocos ſingulos Nobilibus conveniuntes*, qualiter in Domo Regiâ exercere ſolent, enutriti. In (*b*) ferialibus Diebus, eorum pars major *Legalis Diſciplinæ* Studio, & in Feſtivalibus *ſacræ Scripturæ & Cronicorum* Lectioni, poſt Divina obſequia, ſe confert. Ibi quippe Diſciplina Virtutum eſt, & Vitiorum omnium Exilium. Ita ut propter Virtutis Acquiſitionem, Vitii etiam Fugam, Milites, Barones, alii quoque Magnates, & Nobiles Regni, in Hoſpitiis illis ponunt Filios ſuos, quamvis non gliſcunt eos Legum imbui Diſciplinâ, nec ejus Exercitio vivere, ſed ſolùm ex Patrociniis ſuis. Ibi vix unquam Seditio, Jurgium, aut Murmur reſonat, & tamen Delinquentes non aliâ Pœnâ quàm ſolùm a Communione Societatis ſuæ Amotione plectuntur; quia Pœnam hanc ipſi plus formidant, quàm Criminoſi alibi Carcerem timent, aut Vincula: Nam ſemel ab unâ Societatum illarum expulſus nunquam ab aliquâ cæterarum Societatum earunden recipitur in Socium; quò ibi Pax eſt continua, & quaſi Amicitia conjunctorum eſt eorum omnium Converſatio. Formam verò, quâ Leges illæ in his diſcuntur Hoſpitiis, hic exprimere non expedit; cùm Tibi, *Princeps*, eam experiri non liceat. Scito tamen, quòd delectabilis ipſa eſt, & omni modo expediens Legis illius Diſciplinæ, *omni quoque Affectione* digna. Unum tamen Te ſcire deſidero, quòd neque *Aurelianis*, ubi tam Canones addiſcuntur, quàm Civiles Leges, & quò a quampluribus Regionibus confluunt Scholares, neque *Andaginis*, aut in *Cadomo*, aliâve Univerſitate Franciæ, præterquam ſolùm *Pariſiis*, reperiuntur tot Studentes Infantiam evaſi, ſicut in hoc Studio; licèt ibi Addiſcentes omnes ſolùm ab Angliâ ſint oriundi.

CAP. L.

SED cùm Tu, *Princeps*, ſcire deſideres, cur in Legibus Angliæ non datur *Baccalareatûs & Doctoratûs Gradus*, ſicut in utroque Jure in Univerſitatibus eſt dare conſuetum; ſcire *Te* volo, quòd licèt Gradus hujuſmodi in Legibus Angliæ minimè conferantur, datur tamen in illis, *nedum Gradus, ſed & Status quidam, Gradu Doctoratûs non minùs celebris aut ſolemnis*, qui *Gradus Servientis ad Legem* appellatur. Et confertur ſub hac, quæ ſubſequitur, Formâ. Capitalis *Juſticiarius de Communi Banco*, de Conſilio & Aſſenſu omnium Juſticiariorum eligere ſolet, quoties ſibi videtur opportunum, VII vel VIII de maturioribus Perſonis, qui in prædicto generali Studio magis in Legibus profecerunt, & qui eiſdem Juſticiariis optimæ Diſpoſitionis eſſe videntur, & nomina eorum ille deliberare ſolet *Cancellario Angliæ* in Scriptis, qui illicò mandabit per Brevia Regis cuilibet Electorum illorum, quòd ſit coram Rege ad Diem per ipſum aſſignatum; ad ſuſcipiendum *Statum & Gradum* (*a*) *Servientis ad Legem* ſub ingenti Pœnâ, in quolibet Brevium prædictorum limitatâ; ad quem Diem quilibet eorum comparens jurabitur (ſuper ſancta Dei Evangelia) fore paratum ad Diem & Locum tunc ſibi ſtatuendos, ad recipiendum *Statum* & *Gradum* prædictum, & quòd ipſe in Die illo dabit *Aurum*, ſecundum Conſuetudinem Regni in hoc Caſu uſitatam. Tamen, qualiter ad Diem illam, quilibet electorum prædictorum ſe habebit, nec non Formam & modum, qualiter *Status* & *Gradus* hujuſmodi conferentur & recipientur, hic inſerere omitto, cùm Scripturam majorem illa exigant, quam congruit Operi tam ſuccincto. Tibi tamen, Ore tenus, ea aliàs explicavi. Scire tamen Te cupio, quòd adveniente Die ſic Statuto, electi illi, inter alias Solemnitates, *Feſtum* celebrant, & *Convivium* ad inſtar *Coronationis Regis*, quod & continuabitur per *Dies ſeptem*; nec quiſquam Electorum illorum Sumptus, ſibi contingentes circa Solemnitatem Creationis ſuæ, minoribus Expenſis perficiet, quàm mille & ſexcentorum (*b*) Scutorum; quò, Expenſæ, quas

(*b*) Tranſl. Cap. XLIX. f. (*a*) Cap. L. a. (*b*) Cap. XXIX. p. Cap. XLIX. b. Cap. L. e.

octo ſic electi tunc refundent, excedunt Summam 3200 *Marcarum* expenſarum; Pars quædam, inter cætera, hæc erit: Quilibet eorum dabit *Annulos de Auro*, ad Valenciam in toto 40 Librarum (ad minus) Monetæ Anglicanæ. Et bene recolit Cancellarius ipſe, quòd cum ille Statum & Gradum hujuſmodi receperat, ipſe ſolvit pro Annulis, quos tunc diſtribuit, 50 Libras, quæ ſunt 300 Scuta. Solet namque unuſquiſque *Servientium* hujuſmodi, Tempore Creationis ſuæ, dare cuilibet *Principi*, *Duci*, & *Archiepiſcopo*, *in Solemnitate illâ præſenti*, *ac Cancellario*, & *Theſaurario* Angliæ, Annulum ad Valorem 26. s. 8. d. Et cuilibet *Comiti* & *Epiſcopo* conſimiliter præſentibus, nec non *Cuſtodi privati Sigilli*, utrique *Capitali Juſticiario*, & *Capitali Baroni* de *Scaccario* Regis Annulum ad Valorem 20. s. Et omni Domino *Baroni Parliamenti*, & omni *Abbati* & (*c*) notabili *Prælato*, ac magno *Militi* tunc præſenti, *Cuſtodi* etiam *Rotulorum Cancellariæ* Regis, & cuilibet *Juſticiariorum*, Annulum ad Valenciam 1 Marcæ. Similiter & omni *Baroni* de *Scaccario* Regis, *Camerariis*, etiam omnibus *Officiariis* & notabilibus viris in *Curiis* Regis miniſtrantibus, Annulos minoris Pretii, convenientes tamen Statibus eorum quibus donantur. Ita quòd, non erit *clericus*, maximè in *Curiâ Communis Banci*, licèt infimus, quin Annulum ipſe recipiet convenientem Gradui ſuo. Et ultra hos ipſi dant Annulos aliis Amicis ſuis. Similiter & *Libratam magnam* Panni unius Sectæ, quam ipſi tunc diſtribuent in Magnâ Abundantiâ, nedum Familiaribus ſuis, ſed & Amicis aliis & notis, qui eis attendent & miniſtrabunt Tempore Solemnitatis prædictæ. Quare, licèt in Univerſitatibus in Gradum Doctoratûs erecti Expenſas non modicas faciant Tempore Creationis ſuæ, ac Birreta, alia quoque Donaria quàm Bona erogent; non tamen Aurum ipſi conferunt, aut alia Donaria, ſumptusve faciunt, his Expenſis ſimilia. Neque in Regno aliquo *Orbis Terrarum* datur *Gradus ſpecialis* in Legibus Regni illius, præterquam *ſolùm in Regno Angliæ*. Nec eſt Advocatus in Univerſo Mundo, qui Ratione Officii ſui tantum lucratur, ut *Serviens* hujuſmodi. Nullus etiam, licèt in Legibus Regni illius ſcientiſſimus fuerit, aſſumetur ad *Officium* & *Dignitatem Juſticiarii* in *Curiis Placitorum coram ipſo Rege*, & *communis Banci*, quæ ſunt ſupremæ Curiæ ejuſdem Regni ordinariæ, niſi ipſe primitùs Statu & Gradu Servientis ad Legem fuerit inſignitus. Nec quiſquam, præterquam *Serviens* talis, in *Curiâ communis Banci*, ubi *omnia realia Placita* placitantur, placitabit. Quare ad *Statum & Gradum* talem, nullus hucuſque aſſumptus eſt, qui non in prædicto generali Legis Studio *ſexdecim Annos* ad minus antea complevit, & in Signum quòd omnes *Juſticiarii* illi taliter extant Graduati, quilibet eorum ſemper utitur, dum in Curiâ Regis ſedet, *Birreto albo de ſerico*, quod primum & præcipuum eſt de Inſignibus Habitûs, quo *Servientes* ad Legem, in eorum Creatione, decorantur. Nec *Birretum* illud *Juſticiarius*, ſicut nec *Serviens* ad Legem unquam deponet, quo Caput ſuum in toto diſcooperiet, etiam in *Præſentiâ Regis*, licèt *cum Celſitudine* ſuâ ipſe loquatur. Quare, *Princeps præclariſſime*, Tu amodo hæſitare non poteris, quin Leges iſtæ, quæ tam ſingulariter ſupra Civiles Leges, Leges etiam omnium aliorum Regnorum honorantur, & tam ſolemni Statu eruditorum & miniſtrantium in eis venerantur, *prætioſæ* ſint, *Nobiles*, & *ſublimes*, ac magnæ *Præſtantiæ*, maximæque *Scientiæ* & *Virtutis*.

CAP. LI.

SED ut *Juſticiariorum* (ſicut & *Servientium ad Legem*) Status *Tibi* innoteſcat, eorum *Formam*, *Officiumque* (ut potero) jam deſcribam. Solent namque in *communi Banco quinque Juſticiarii* eſſe, vel *ſex* ad majus. Et in *Banco Regis*, *quatuor* vel *quinque*, ac quoties eorum aliquis, per Mortem vel aliter ceſſaverit, Rex de Adviſamento Concilii ſui eligere ſolet unum de *Servientibus ad Legem*, & eum per *Literas* ſuas *Patentes* conſtituere in

(*c*) Tranſl. Cap. L. h.

Juſticiarium,

Juſticiarium, loco Judicis ſic ceſſantis; & tunc (*a*) Cancellarius Angliæ adibit *Curiam*, ubi *Juſticiarius* ſic deeſt, deferens ſecum Literas illas, ac ſedens in Medio Juſticiariorum, introduci facit Servientem ſic electum; cui in plenâ Curiâ ipſe notificabit Voluntatem Regis, de officio Judiciario ſic vacante, & legi faciet in publico Literas prædictas: Quo facto, *Cuſtos Rotulorum Cancellariæ Regis* leget coram eodem Electo *Jusjurandum* quod ipſe facturus eſt, quod & cùm ſupra *Sancta Dei Evangelia* ipſe juraverit, *Cancellarius* ſibi tradet Literas Regis prædictas & Capitalis Juſticiarius Curiæ illius aſſignabit ſibi *Locum* in eâdem, ubi deinceps ille ſedebit, & mox eum ſedere faciet in eodem. Sciendum tamen *Tibi* eſt, *Princeps*, quòd *Juſticiarius* iſte inter cætera tunc jurabit, *ſe Juſtitiam miniſtraturum indifferenter omnibus Hominibus* coram eo placitantibus, Inimicis & Amicis, nec ſic facere differet, etiamſi Rex per Literas ſuas, aut Ore tenus, contrarium juſſerit. Jurabit etiam, quòd ex tunc non recipiet ipſe ab aliquo, præterquam a *Rege Feodum*, aut *Penſionem* aliquam, ſeu *Liberatam*, neque Donum capiet ab habente Placitum coram eo, præterquam Eſculenta & Poculenta, quæ non magni erunt Pretii. Sciendum etiam Tibi eſt, quòd *Juſticiarius* ſic creatus, Convivium, Solemnitatemve, aut Sumptus aliquos non faciet Tempore Suſceptionis Officii & Dignitatis ſuæ; cùm non ſint illa *Gradus* aliqui in *Facultate Legis*, ſed *Officium* ſuum illa ſint & *Magiſtratus*, ad Regis nutum duratura, *Habitum* tamen *Indumenti* ſui (in quibuſdam) ipſe extunc mutabit, ſed non in omnibus Inſigniis ejus. Nam *Serviens ad Legem* ipſe exiſtens, *Robâ longâ*, ad inſtar Sacerdotis, *cum* (*b*) *Capicio penulato* circa Humeros ejus, & deſuper *Collobio*, cum duobus *Labelulis*, qualiter uti ſolent Doctores Legum in Univerſitatibus quibuſdam, cum ſupra deſcripto *Birreto* veſtiebatur. Sed *Juſticiarius* factus, loco (*c*) Collobii, (*d*) *Clamide* induetur, *firmatâ ſuper Humerum ejus dexterum*, cæteris Ornamentis Servientis adhuc permanentibus, excepto quòd (*e*) *ſtragulatâ veſte*, aut *Coloris bipertiti*, ut poteſt *Serviens*, *Juſticiarius* non utetur, & *Capicium* ejus non alio quàm *Menevero* penulatur, *Capicium* tamen *Servientis Pellibus agninis* ſemper *albis* implicatur. Qualem *Habitum* Te plus ornare optarem, cùm Poteſtas Tibi fuerit, ad Decorem Statûs Legis, & Honorem Regni tui. Scire Te etiam cupio, quòd Juſticiarii Angliæ non ſedent in Curiis Regis, niſi *per tres Horas in Die*, ſcilicet, *ab Horâ* VIII. *ante Meridiem uſque Horam* XI. *completam*; quia *poſt Meridiem Curiæ illæ non tenentur*. Sed *Placitantes* tunc ſe devertunt (33) *ad Perviſum*, & alibi conſulentes cum Servientibus ad Legem, & aliis Conſiliariis ſuis. Quare *Juſticiarii*, poſtquam ſe refecerint, totum Diei reſiduum pertranſeunt ſtudendo in *Legibus*, *ſacram* legendo *Scripturam*, & aliter ad eorum Libitum *contemplando*, ut Vita ipſorum plus contemplativa videatur quàm activa. Sicque quietam illi Vitam agunt ab omni Sollicitudine & Mundi Turbinibus ſemotam. Nec unquam compertum eſt, eorum aliquem Donis aut Muneribus fuiſſe corruptum. Unde & hoc Genus Gratiæ vidimus ſubſecutum, quòd *vix eorum aliquis ſine Exitu decedat*, quod juſtis magnæ & quaſi appropriatæ Benedictionis Dei eſt. Mihi quoque non minimi Muneris Divini cenſetur eſſe penſandum, quòd *ex Judicum Sobole, plures de Proceribus & Magnatibus Regni hucuſque prodierunt, quàm de aliquo alio Statu Hominum Regni, qui ſe Prudentiâ & Induſtriâ propriâ opulentos, inclytos, nobileſque fecerunt.* Quanquam *Mercatorum Status*, quorum aliqui ſunt, qui omnibus *Juſticiariis* Regni præſtant Divitiis, Judicum Numerum in Millibus Hominum excedat. Nam Fortunæ, quæ nihil eſt, iſtud aſcribi non poterit, ſed Divinæ ſolùm Benedictioni fore, arbitror, tribuendum. Cùm ipſe per *Prophetam* dicit, "Quòd *Generatio Rectorum benedicetur.*" Et alibi de Juſtis loquens *Propheta* ait, "Quòd *Filii eorum in Benedictione erunt.*" *Dilige* igitur, *Fili Regis*, *Juſtitiam* quæ ſic ditat, colit, & perpetuat Fœtus Colentium eam. Et *Zelator eſto Legis*, quæ Juſtitiam parit, ut *a Te* dicatur, quod *a Juſtis* ſcribitur. "*Et Semen eorum in æternum manebit.*"

(*a*) Tranſl. Cap. LI. d. (*b*) Ibid. g. (*c*) Cap. XXXV. i. (*d*) Cap. LI. h.
(*e*) Ibid. i. (33) Ibid. m (33).

CAP. LII.

P*Rinceps.* Unum jam ſolum ſupereſt, Cancellarie, declarandum, quo parumper adhuc fluctuat, inquietatur quoque Mens mea; in quo ſi eam ſolidaveris, non amplius Te Quæſtionibus fatigabo. Dilationes ingentes, ut aſſeritur, patiuntur Leges Angliæ in Proceſſibus ſuis, plus quàm Leges aliarum Nationum; quòd Petentibus, nedum Juris ſui Prolatio eſt, ſed & Sumptuum quandoque importabile Onus, & maximè in Actionibus illis, in quibus Damna Petentibus non redduntur.

CAP. LIII.

CAncellarius. In *Actionibus perſonalibus* extra *Urbes* & *Villas* Mercatorias, ubi proceditur *ſecundum Conſuetudines & Libertates earundem*, Proceſſus ſunt Ordinarii. Et quantaſlibet Dilationes patiuntur, non tamen *exceſſivas.* In Urbibus verò, & Villis illis, potiſſimùm cùm urgens Cauſa depoſcat, celeris, ut in aliis Mundi Partibus, fit Proceſſus; nec tamen (ut alibi) ipſi nimiùm aliquando feſtinantur, quò ſubſequitur Partis Læſio. Rurſus in *realibus Actionibus*, in omnibus ferè Mundi Partibus, moroſi ſunt Proceſſus, ſed in Angliâ quodammodo *celeriores.* Sunt quippe in Regno Franciæ, in Curiâ ibidem ſummâ, quæ *Curia Parliamenti* vocitatur, Proceſſus quidam, qui in eâ plus quàm *triginta* Annis pependerunt. Et novi Ego Appellationis Cauſam unam, quæ in Curiâ illâ agitata fuit, jam per decem Annos ſuſpenſam fuiſſe, & adhuc veriſimile non eſt, eam infra Annos X. alios poſſe decidi. Oſtendit & mihi dudum, dum *Pariſiis* morabar, Hoſpes meus Proceſſum ſuum in Scriptis, quem in Curiâ Parliamenti ibidem ipſe tunc VIII. Annos, pro IV. s. Reditûs, qui de Pecuniâ noſtrâ VIII. d. non excedunt, proſecutus eſt, nec ſperavit ſe in VIII. Annis aliis Judicium inde obtenturum. Alios quoque nonnullos novi Caſus ibidem, his ſimiles. Sicque Leges *Angliæ*, *non tantas*, ut mihi viſum eſt, *Dilationes ſortiuntur, ut faciunt Leges Regionis illius.* Sed reverà, perneceſſarium eſt, *Dilationes* fieri in Proceſſibus omnium Actionum, dummodo nimiùm ipſæ non fuerint exceſſivæ. Nam ſub illis *Partes*, & maximè *Pars rea*, quàm ſæpe ſibi provident de Defenſionibus utilibus, ſimiliter & Conſiliis, quibus aliàs ipſi carerent. Nec unquam in Judiciis tantum imminet Periculum, *quantum parit Proceſſus feſtinatus.* Vidi nempe quondam apud Civitatem *Sarum*, coram *Judice* quodam, ad Gaolam ibidem deliberandam cum Clerico ſuo aſſignato, Mulierem de Morte Mariti ſui *infra Annum*, de Interfectione ejus, *attinctam, ſimiliter & combuſtam.* In quo Caſu licuit Judici illi, uſque poſt Annum illum, (*a*) Arretamentum ſive (*a*) Diſrationem Mulieris illius (*b*) reſpectuaſſe. Et poſt Annum illum vidi unum de Servientibus interfecti illius, coram eodem Juſticiario, de Morte ejuſdem Magiſtri ſui convictum; qui tunc publicè fatebatur ipſummet ſolum Magiſtrum ſuum occidiſſe, & magiſtram ſuam, Uxorem ejus, tunc combuſtam, innocentem omninò fuiſſe de Morte ejus; quare ipſe *tractus* & *ſuſpenſus* fuit. Sed tamen omninò, etiam in ipſo Mortis Articulo, Mulierem combuſtam, immunem a Crimine illo fuiſſe, ipſe lugebat. O quale putandum eſt, ex hoc Facto, Conſcientiæ Diſcrimen & Remorſum eveniſſe Juſticiario illi tam præcipiti, qui potuit Proceſſum illum juſtè retardâſſe? Sæpiùs proh Dolor, ipſe mihi faſſus eſt, quòd nunquam in Vitâ ſuâ Animum ejus de hoc Facto ipſe purgaret. *Crebrò* enim *in Deliberationibus, Judicia* matureſcunt; ſed *in accelerato Proceſſu, nunquam.* Quare, *Leges Angliæ Eſſonium admittunt*, qualia non faciunt Leges aliæ Mundi univerſi. Nonne quàm utiles ſunt *Vocationes ad Warrantum? Auxilia* de his, ad quos ſpectat *Reverſio Tenementorum*, qui in Placitum deducunt, & qui habent Evidentias eorundem. *Auxilia* etiam *de Coperticipibus*, qui reddent pro Ratâ ſi Tenementum Comparticipi allottatum evincatur: Et tamen hæc *Dilationes* ſunt, ſicut *Tu, Princeps*, aliàs noſti ex Doctrinâ

(*a*) Tranſl. Cap. LIII. g. (*b*) Ibid. h.

meâ. Et Dilationes his ſimiles Leges aliæ non admittunt, neque Leges Angliæ frivolas & infructuoſas permittunt (*c*) Inducias. Et ſi quæ in Regno illo Dilationes in Placitis, minùs accommodæ, fuerint uſitatæ, in omni Parliamento amputari illæ poſſunt, etiam & omnes Leges aliæ, in Regno illo uſitatæ, cum in aliquo claudicaverint, in omni Parliamento poterunt reformari. Quò rectè concludi poteſt, quòd *omnes Leges Regni illius optimæ ſunt, in Actu vel Potentiâ*; quò faciliter in Actum duci poterunt, & in Eſſentiam realem. Ad quod faciendum, quoties Æquitas id popoſcerit, ſinguli Reges ibidem Sacramento aſtringuntur ſolemniter præſtito Tempore Receptionis Diadematis ſui.

CAP. LIV.

PRinceps. Leges illas, nedum bonas, ſed optimas eſſe, Cancellarie, ex Profecutione tuâ in hoc Dialogo certiſſimè deprehendi. Et ſi quæ ex eis meliorari depoſcant, id certiſſimè fieri poſſe, Parliamentorum ibidem Formulæ nos erudiunt. Quò, realiter, potentialitérve, Regnum illud ſemper præſtantiſſimis Legibus gubernatur, nec tuas in hac Concionatione Doctrinas futuris Angliæ Legibus inutiles fore conjicio, dum non delectet regere Legibus, quæ non delectant. *Faſtidit* namque *Artificem Ineptio Inſtrumenti, & Militem ignavum reddit Debilitas Lanciæ & Mucronis.* Sed ſicut ad Pugnam animatur Miles, cùm nedum ſibi prona ſint Arma, ſed & magis cùm in Actibus bellicis ipſe ſit expertus, dicente Vegetio de re militari, quòd *Scientia Rei bellicæ dimicandi Audaciam nutrit.* (Quia nemo facere metuit quod ſe bene didiciſſe confidit.) Sic & Rex omnis ad Juſtitiam animatur, dum Leges, quibus ipſa fiet, nedum juſtiſſimas eſſe agnoſcit, ſed & earum ille expertus ſit Formam & Naturam, quas tantum in Univerſali, incluſivè & in confuſo, *Principi* ſcire ſufficiet, remanente ſuis *Judicibus* earum diſcretâ, determinatâque Peritiâ & Scientiâ altiori. Sic equidem & *Scripturarum divinarum Peritiam*, ut dicit *Vincentius Beluacenſis* in Libro de *Morali Inſtitutione Principum*, Omnis Princeps habere deberet; cùm dicat Scriptura ſuperiùs memorato, quod "*Vani ſunt omnes, in quibus* "*non eſt Scientia Dei.*" Et *Proverbiorum* XVI. ſcribatur, "*Divinatio* "(id eſt, divina Sententia, vel Sermo divinus) *ſit in Labiis Regis*;" & tunc, "*In Judicia non errabit Os ejus.*" Non tamen profundè, determinatéve intelligere tenetur *Princeps* Scripturas ſacras, ut decet *ſacræ Theologiæ Profeſſorem:* Sufficit namque ei earum in confuſo deguſtare Sententias, qualiter & Peritiam Legis ſuæ. Sic & fecerunt *Carolus Magnus*, *Lodovicus* Filius ejus, & *Robertus* quondam *Rex Franciæ*, qui hanc ſcripſit Sequentiam (*Sancti Spiritûs adſit nobis Gratia*;) & quàm plures alii, ut in XV. Capite Libri prædicti, *Vincentius* prædictus luculenter docet. Unde & Doctores Legum dicunt, quòd "*Imperator gerit omnia Jura ſua in* "*Scrinio Pectoris ſui:*" non; quia omnia Jura ipſe noſcit realiter & in Actu, ſed dum Principia eorum ipſe percipit, Formam ſimiliter & Naturam, omnia Jura ſua ipſe intelligere cenſetur, quæ etiam transformare ille poteſt, mutare & caſſare; quò in eo potentialiter ſunt omnia Jura ſua, *ut in Adam erat Eva, antequam plaſmaretur.* Sed quia, Cancellarie, ad Legum Angliæ Diſciplinatum mihi jam conſpicio ſufficienter eſſe ſuaſum, quod & in hujus Operis Exordio facere promiſiſti; non te amplius hujus Prætextu ſollicitare conabor; ſed obnixè depoſco, ut in *Legis hujus Principiis*, ut quondam incepiſti, me erudias, docens quodam modo ejus agnoſcere Formam & Naturam, quia *Lex iſta* mihi ſemper peculiaris erit *inter cæteras Leges Orbis*, inter quas ipſam lucere conſpicio, ut *Lucifer inter Stellas.* Et dum Intentioni tuæ, quâ ad Collationem hanc concitatus es, jam ſatisfactum eſſe non ambigo, Tempus poſtulat & Ratio, ut Noſtris Colloquiis Terminum conferamus: reddentes ex eis Laudes Ei & Gratias, qui ea incepit, profecutus eſt, & finivit, *Alpha & Omega* quem dicimus: quem & laudet omnis Spiritus. *AMEN.*

(*c*) Tranſl. Cap. LIII. l.

RADULPHI

DE

HENGHAM

Edwardi Regis I.

Capitalis *olim* Juſtitiarii

SUMMÆ.

Magna HENGHAM, & Parva,
vulgò nuncupatæ. ex vett. Codd. MSS.
cum Cl. Seldeni Notis.

LONDINI:

Typis E. & R. Nutt, & R. Gosling, (Edw. Sayer Arm. Aſſignat.) Proſtant venales apud Robertum Goſling, ad inſigne Coronæ & Mitræ in vico vulgò vocato Fleet-Street.
MDCCXXXVII.



AD LECTOREM.

HAUT *importunum eſt, ut de* Scriptore *iſthoc jam nunc publici juris facto, de* Opere *ipſo, de* Sermone *denique, Ariſtarchis ſatis inviſo, & inſtar portenti (ut reliquus ferè, quo jus Anglicanum conſcribitur) habito, paucula prælibentur. Ex iis erat Radulphus de Hengham* Juſtitiarijs *qui, quòd lites ſuas feciſſent poſtulati, & repetundarum damnati, non modò graviſſimè anno* XVI. *Edwardi primi, cum in Angliam ex Aquitania remearet, multabantur, ſed etiam ordinem amittebant. Privatis, ſive Centumviralibus, judicijs, hac tempeſtate, præerat judex primarius (quem* Capitalem Juſtitiarium *de* Communi Banco *phraſi dicimus forenſi)* Thomas *de* Weylond, *Publicis Radulphus*; Capitalis Angliæ Juſtitiarius *vulgò nuncupatus. Uterque ordine ſummotus. Radulphus* VII. CIↃ. *libris luebat. verùm Thomas ille bonis omnibus exutus exulabat, quod veteri etiam jure Romanorum erat nonnunquam repetundarum pœna, uti ad legem Juliam docet Julius Paullus. Hic autem, poſtquam in principis redierat gratiam, ſummus judiciorum privatorum ſuffectus eſt præfectus. Et hunc & illum ita memorat vetuſtus annalium ſcriptor,*

Thomas de Weylond en banc primes nome
Per agard de court, le reign ad foyzure
Sir Raufe de Hengham ad tant diſpute
Que du Banc le Roy perdu ad le ſec.

Plura de ijs, cæteriſque, ſub id tempus, Juſtitiarijs pœnæ obnoxijs, habes apud rerum Anglicarum conſarcinatores vernaculos. Ex eadem ortus eſſe videtur familia, ex qua Willielmus *filius* Adæ *de* Hengham & Richardus *de* Hengham; *qui in pago Norfolcienſi, plerunque Thetfordiæ,* Juſtitiarij ad aſſiſas capiendas & ad Gaolam deliberandam, *ſub initiis Henrici tertij, in* (*) *Archivis ſæpius*

(*) *Rot. Pat.* † 11 *Hen.* 3. *Memb.* 11. & alibi *eodem Rot. & Clauſ.* 11 *Hen.* 3. *Memb.* 8. † 10 Hen. 3. in Edit. Wilk.

memorantur. Obiit anno ſalutis reparatæ CIↃ. CCC. IX. *hoc eſt anno Edwardi ſecundi ſecundo; quod ex actis publicis tranſactionum, quas* **Fines** *appellamus, cognoſcitur. Marmore ejus ſepulchrali, in* D. *Pauli ædibus, reſtant inſcripti, literis fugientibus, verſiculi hi miſeri.*

Per verſus patet hos, Anglorum quod jacet hic flos;
Legum qui tuta dictavit vera ſtatuta,
Ex *Hengham* dictus *Radulphus* vir benedictus.

Summas haſce, Magnam **Hengham**, *&* Parvam **Hengham** *vocant. Utraque in jus vocandi ſeu vadiandi, excuſationum, & exceptionum, in actionibus maximè* de Recto, de Dote, *&* de Aſſiſa, *formulæ & verba ſolennia continentur. quæ tametſi ævo noſtro vix ſint in uſu, praxi nimirùm juris aliò plerunque vergente, inde tamen colligas licet quanta fuerint apud priſcos juris Anglicani peritos autoritate, quòd in optimæ notæ Codd. vett. Statt. MSS. ambæ velut agendi normulæ olim à pragmaticis circumferebantur. Accedit etiam, quòd quiſquis ille fuerit qui* Magnam Chartam *& quæ ſequuntur Latinè & Francicè conſcripta in notiſſimo illo juris enchiridio, primùm Anglico donaverit idiomate, has etiam Radulphi, ut lectore ante alia dignas, tranſtulerit, alteramque* **Michele Hengham** *alteram* **Luttle Hengham** *inſcripſerit. Manuſcriptum exemplar illius verſionis ætatem Edwardi ſive* II. *ſive* III. *redolentis, penes eſt virum* CL. *multijugæ item eruditionis, & vetuſtatis peritiſſimum* Franciſcum Tate *JC.tum. Stylus ſcriptoris, vel potiùs ipſa ſtyli vocabula, ſatis ſunt à latinitate aliena, uti & veteres ferè qui reſtant autores, conſtitutiones, atque acta publica juris Anglicani. Cæterum, cum ante Normannos Anglicè, tempeſtate verò citeriori, Francicè, actiones heic intenderentur, & ſolennes pro tribunali diſputationes haberentur, ſermo autem Latinus caſu accederet; id ferè neceſſum eſt eveniret eis, qui, ſive publicis actis ſive privatim conſcriptis libris, jus Anglicanum latio donare ſermone ſunt adgreſſi, quod olim Theophilo Anteceſſori, Conſtantino Harmenopulo, autori Baſilicôn, Athaliatæ, Blaſtari, Photio, Theodoro Balſamoni atque ejuſdem farinæ alijs accidit, qui jura Romanorum & Civilia & Pontificia Græcè, in Orientalis Imperij uſum, verterunt, ut nimirùm quamplurima vocabula merè Latina Græco in contextu, mutatis tantummodò elementis, retinerent. Cujuſmodi ſunt* Ιντέρδικτον δεκορὲμ βονορὲμ, Αδελίζια ἀγωγὴ, Βονορὲμ ῥαπτορὲμ, δεδόλω μάλω, Δεννοφφοικιοσο, Ιυρὲμ, ἰψοῖυρε, ἐμμάϛκιπαϛδεὶν, Ιυνζερσιτὰς, φιδεκομμισὲμ. *Pro* Interdictum de quorum Bonorum, Ædilis actio, Bonorum raptorum, de Dolo malo, De inofficioſo, In rem, Ipſo jure, emancipare, univerſitas, Fidei commiſſum, *atque id genus ſexcenta alia paſſim occurrentia. Minimè enim ignari erant, non tam atticiſmos in oratione, nec græcas voces in nominum verſione ſectari ſe debere, quam Juris peritorum quorum Reſponſa, atque imperatorum, quorum Sanctiones interpretarentur, mentem ſervare. Ridiculum eſt, pharmacum a poculi materie æſtimare. Inſanum, Decembri eò repudiare lacernam, quod non ex lana ſit ſive Apula, ſive Attica, ſive Lemſteriana. id quod fa-*

ciunt fermè ij, qui ob orationis barbariem res ipſas reijciunt. quod optimè olim notavit magnus Plutarchus etiam longè chariſſimus Muſarum alumnus, in eos, qui rebus ſeu docendis ſeu dicendis ſermonis puritatem faſtidioſi anteferunt. Inter ea autem ſcripta forſan hæc Radulphi fuerint cenſenda, quæ in antiquariorum loculis ſervata non tam reconditum quid aut inauditum docent, quam ideò maximè deſiderantur, ut quæ, quanta, & cujuſmodi doceant, cum nimirùm magna præ ſe ferant nomina, ſtudioſorum votis innoteſcat. Nec tamen deſunt Radulpho, *quæ valorem ei concilient. Abſque illo eſſet & Henrico de Bractona (qui etiam plurima, nec tamen quæ ſcitu digna omnia heic habentur, nec tam certo formularum ordine tradidit) haùt pauca de Excuſationibus præſertim & vadimoniis deſertis (*Eſſoins & Defaults *in foro vocant) prorſus forent incognita. Cæterùm his fruere quiſquis es lector, & vale. Ex ædibus Interioris* Templi Prid. Cal'. *Auguſti.* CIↃ. DC. XVI.

INDEX

INDEX CAPITUM.

HENGHAM MAGNA.

CAP. I. *BREVE de Recto cum ſuis Branchijs.* Page 2

CAP. II. *Quæ placita pertinent ad Majorem Curiam Domini Regis, & quæ ad Vicecomites provinciarum pertinent placitanda.* 5

CAP. III. *De juriſdictione Curiæ Baronis & qualiter procedendum eſt in eadem.* 8

CAP. IIII. *Qualiter procedendum eſt in Comitatu poſt Curiam Baronis alicujus falſatam. Breve de Pace. Recordum Comitatus. Falſum judicium in Comitatu. Sectatores.* 9

CAP. V. *De officio ſummonitorum. Lex vadiata. Eſſonia.* 12

CAP. VI. *Modus eſſoniandi & reddendi eſſonia & dies communes in brevi de Recto. Eſſoniatores. Atturnati.* 13

CAP. VII. *De Attornatis faciendis.* 15

CAP. VIII. *Secundus dies placiti. Defaltæ. Magnum Cape. Parvum Cape. Non Plevine. Legis vadiatio.* 16

CAP. IX. *Placiti Tertius dies. Eſſonii calumniatio. Fourcher. Plevine. Recovery ſur default. Breve de Scias. Parvum & Magnum Cape. Eſſoniorum formulæ. De malo lecti. Languor. quatuor milites miſſi ad infirmum. Defalt puis eſſoin de mal de lit, & auters defaults. Viſores. View de terre.* 18

CAP. X. *De Exceptionibus. Viſu petendo.* 23

CAP. XI. *Quartus dies placiti. Eſſonium de ſervicio domini Regis.* 25

CAP. XII. *Quintus dies placiti. Capere languorem ſemel tantum licet.* 26

CAP. XIII. *Sextus dies placiti. Voucher. Recoverie & counterpleas ſur ceo. Voucher d'enfant. Warrantia ex Dedi. ex homagio & ſervicijs receptis. Age.* ibid.

HENGHAM PARVA.

CAP. I. *De Eſſonijs.* Page 31

CAP. II. *Brevia de Dote.* 32

CAP. III. *Exceptiones contra Brevia de Dote.* 33

CAP. IV. *De viſu concedendo.* 35

CAP. V. *De brevibus Aſſiſarum. & primo de brevi novæ Diſſeiſinæ.* 36

CAP. VI. *De titulis. Hereditaria ſucceſſione, feoffamento, & Eſchaeta. quomodo acquiritur liberum tenementum.* ibid.

CAP. VII. *Quibus modis fit diſſeiſina.* 38

CAP. VIII. *Quibus Perſonis competit aſſiſa. Exceptiones item dilatoriæ & peremptoriæ. De vocando in auxilium. per eundem deſcenſum.* 39

RADULPHI DE HENGHAM Summa Magna.

LICET ordo placitandi in Curia Domini Regis, ſecundum leges & conſuetudines regni a (1) Primiceriis noſtris protinus retro Statutas, æquus & juſtus ac in omnibus acceptabilis extiterit, Hoc tamen, quod idem ordo in forma communis ſcripturæ non regiſtratur, quamplurimos ipſum ſcire conantes aliquantiſper impedit & retardat. Nam ſi mens humana ſingula cordetenus, quod abſurdum eſt, memorare valeret, ſequeretur tunc quod ſcribere nil aliud eſſet quam laborem laboribus anticiparé. Et quia frequenter ſcriptura & properè rememorat ea quæ per labilitatem ingenii ſæpiûs ſubciduńt & vacillant, Ego non ad inſtruendum aliquem ſuper hujuſmodi legibus regni, verum ad materiandum futuris correctoribus quædam introductiva, non ſerie qua debui ſed qua † ſcui, propoſui compilare. Cernentibus ea ſupplicans, ut opera huic appoſita, in ſcientiam acquietent operari & excuſent. *Brevia* ſiquidem Regis de placito terræ; & qualiter & quibus *dilationibus* poteſt tenens differre litem, ante communem *apparitionem* in Curia, & Quomodo debet *Petens* opponere, & reſpondere *tenens*; in quibus caſibus poteſt denegari *viſus* terræ & in quibus non; & natura exceptionum tam *dilatoriarum* quam *peremptoriarum* videlicet ante viſum terræ factarum & poſt; & Modus (2) *Cyrograffandi* ſi per *finem* factum lis decidatur necnon & exceptionis contra ipſum finem; ac Quædam *Exemplaria* diſcuſſionem hujuſmodi placitorum juvantia ſuis locis continentur inferius. Et de Juriſdictione *Curiæ Baronis* & *Comitatus* cum lis a tali Curia tranſlata fuerit.

(1) *Primiceriis*] He means *Prothonotaries*. The word is often in Conſtitutions of the time of the declining Empire; as *Primicerius ſacri cubiculi*, *Lampadariorum*, *Officiorum Palatinorum*, and the like. 'Mongſt them was *Primicerius Notariorum*, that is, the Emperor's chief Notarie. *Alciat.* ad Cod. 12. tit. 7. Primicerius, Notarius principis dicitur, & honore inter Notarios primus, ſicut ſequens dicitur ſecundicerius. Κηρὸς n. ceram ſignificat Κήρωμα tabulam ſignatam, in qua antiqui ſcribebant. Ab hujuſcemodi igitur tabulis dicti ſunt *primicerii*. Thoſe *primicerii Notariorum* in *Rome*, although diſcharged from their office, yet remain'd in equall degree of honor with the *Proconſuls*, as appears in a Conſtit of *Gratian*, *Theodoſius*, and *Valentinian*, in *Cod. Theodoſ. lib.* 6. *tit.* 10. [V. *Spelm. Du Freſne. Pitiſc.* ad vv. *Primicerius*, *Primiſcrinius*.

(2) *Modus Cyrograffandi*] It ſeems by this, that either we have not all his firſt Copy, or els he never finiſht what he here promiſes. For we have no more of it.

CAP. I.

Breve de Recto *cum ſuis Branchiis.*

E*Dwardus dei gratia &c.* Henrico Huſſy *ſalutem. Præcipimus tibi quod ſinè dilatione plenum rectum tencas* Ric. le Jay *de una Carucata terræ cum pertinentiis in* H. *quam clamat tenere de te per liberum ſervicium unius d. per annum pro omni ſervicio quam* J. de B. *ei deforciat & niſi feceris, vicecomes de* Suſſex *faciat, ne amplius inde clamorem audiamus pro defectu recti.* T. &c. vel ſic, *unde* W. de O. *quatuor acras* B. de O. *quinque acras & tu ipſe decem acras terræ &c. Et unde* J. de D *unam medietatem &* R. de P. *aliam medietatem terræ ei deforciat. Et niſi feceris &c.* vel ſic.

Rex tali ſalutem. Præcipimus tibi quod ſinè dilatione plenum rectum teneas Richardo le Jay *de uno meſuagio uno molendino decem acris terræ* X. *acris paſturæ* X. *acr. boſci &* XX. *acr. mariſci cum pertinentiis in* H. *quæ clamat tenere de te per liberum ſervicium unius denarii per annum pro omni ſervicio unde* W. de M. *duas partes unius meſuagii & unius molendini, decem acras terræ decem acras prati* X. *acras paſturæ &* X. *acras mariſci, Et* W. de B. *tertiam partem unius meſuagii unius molendini* X. *acr. terræ* X. *acras prati* X. *acras paſturæ* X. *acras mariſci eidem deforciat & niſi &c.* vel ſic.

Rex tali ſalutem. Præcipimus tibi quod ſinè dilatione plenum rectum teneas R. le Jay *de* XX. *acris terræ & mediet. unius meſuagii & unius molendini cum pertinentiis in* H. *quas clamat pertinere ad liberum tenementum ſuum quod de te tenet in eadem villa per liberum ſervitium unius libræ Piperis vel Cumini per annum pro omni ſervicio unde* W. de J. *decem acras terræ & medietatem unius meſuagii &* W. de E. X. *acr. terræ & medietat. unius molendini ei deforciant & niſi, &c.* vel ſic.

Rex tali ſalutem. Præcipimus tibi quod ſinè dilatione plenum rectum teneas Ric. le Jay *de* X. *acris terræ* X. *acris prati* X. *acris paſturæ cum pertinentiis in* H. *quas clamat eſſe rationabilem partem ſuam quæ eum contigit de libero tenemento quod fuit* E. de N. *patris* vel *matris fratris* vel *ſororis, avunculi* vel *amitæ conſanguinei* vel *conſanguineæ ſuæ in eadem villa & tenere de te per liberum ſervitium, &c. quas* W. de C. *ei deforciat vel quas clamat eſſe de rationabile parte ſua quæ eum contingit de libero tenemento quod fuit* E. de N. *patris vel matris &c. in eadem villa & tenere de te &c.*

Et ſi terra, quæ petitur, pertinet ad eam quæ tenetur ſub eodem ſervicio, tunc ſic. *Quam clamat pertinere ad liberum tenementum quod de eo tenet in eadem villa per liberum ſervitium &c. quam talis ei deforciat &c.*

Vacante Archiepiſcopatu vel Epiſcopatu, ſeu alio magnate extra regnum exiſtente, tunc ſic.

Rex Cuſtodi Archiepiſcopatus vel *Epiſcopatus ſalutem. Præcipimus vobis &c. quas clamat tenere de prædicto Archiepiſcopatu* vel *Epiſcopatu per liberum ſervicium &c. quas* O. *ei deforciat &c. & niſi &c.* vel ſic, *Rex Ballivis* J. *Lincolnienſis Epiſcopi* vel *Ballivis* G. de Clare *Com. Gloceſtriæ* vel *Ballivis* (3) J. filio Alani *Comiti de* Arundel *ſalutem. Præcipimus vobis quod ſinè dilatione &c. tali*

(3) J. filio Alani *Comiti de Arundel*] By marriage of a *Fitz-Alan* with the heire female of the *D'Aubignies*, Earl of *Arundel*, came that Surname, which is here, as a word literally ſignifying, turn'd into *Latine*, by *Filius Alani*. It was uſuall in thoſe elder times to do ſo. As to expreſſe *Champernoun*, by *de Campo Arnulphi*, 7 Ed. 3. *fol.* 35. a. & 49. b. and the rolls have commonly *Filius Petri*, *Filius Herberti*, de *Bello monte*, de *Bello fago*, de S. *Leodegario*, de *Monte Caniſio*, de *Monte forti*, *Mortuo Mari*, for *Fitz-Peeter*, *Fitz-Herbert*, *Beaumont*, *Beaufage*, S. *Leiger*, *Mount-Chenſy*, *Mount-fort*, *Mortimer*, and ſuch more. So in 29 Ed. 3. *fol.* 30. *b.* Colle betide Somerſham and *Colle juxta Somerſham* (although Colle indeed appear'd in the record to be in Somerſham) are held all one in expreſſing the name of that place. In 30 *Ed.* 3. *fol.* 2. *b. villa de Pontefracto* is Pomfreit in a *Præcipe*, and in 38 *Ed.* 3. *fol.* 28. Newark is taken in the name of the prioreſſe of *Newark*, as a name ſignifying a new work. But in 25 *Ed.* 3. *fol.* 38. *a. Apud villam Sancti Petri* is diſallowed for *apud* Petreſton, though one interpret the other. And the caſe of *P.* 11 *Ed.* 3. *tit. quod juris clamat* 2. in the MS. is, that *John de Bray-*

tali de XX. *acris terræ cum pertinentiis in* N. *quas clamat tenere de prædicto Epiſcopo* vel *prædicto Comite*, vel *de prædicto filio Alani &c. quas* M. de N. *ei deforciat & niſi &c.* vel ſic.

Rex venerabili in Chriſto patri J. (4) *eadem gratia Lincolnienſi Epiſcopo, ſalutem. Mandamus vobis quod ſine dilatione, &c.* A. de N. *de* X. *acris terræ cum pertinentiis quas clamat tenere de vobis per liberum ſervicium, &c. quas* E. *ei deforciat & niſi &c. Vicecomes &c.* vel ſic. *Rex Ballivis ſuis* Wintoniæ *ſ. Præcipimus vobis &c.* A. de N. *de uno meſuagio cum pertinentiis in* W. *quod clamat tenere de nobis* (5) *in liberum Burgagium* vel (6) *maritagium.*

Hic non dicatur, per annum, (7) nec, pro omi ſervicio, vel ſic.

Rex Majori & Vicecomi. London. S. *Præcipimus vobis &c.* A. de N. *de uno meſuagio cum pertinentiis in London quod clamat tenere de nobis per liberum ſervitium &c. quod* O. *ei deforciat. Ne amplius &c.* vel ſic.

Rex A. de N. S. *præcipimus tibi &c. de quatuor virgatis terræ &c. quas clamat tenere de te per liberum ſervicium unius Auſturconis* vel *unius Eſperuarii ſorii* vel *unius libræ piperis*, vel *Cummini per annum* vel *per liberum ſervicium ſequendi curiam tuam de* N. *de tribus ſeptimanis in tres ſeptimanas*, vel *per liberum ſervicium* (8) *portandi brevia infra regnum Angliæ*, vel *infra talem comitatum*, vel *ſequendi comitatum talem*, vel *hundredum pro omni ſervicio.*

ford brought the Writ againſt *Iſabell Peverell*, grounded upon the Note of a Fine; whereby *Gilbertus filius Stephani* had granted the reverſion of the Manor of *Wolward*, which *Iſabell* held for life, to *John* in fee; and *Parning* took exception to the Note and Writ, becauſe this *Gilbert*'s father's name was *Richard Fitz-Eſteven*, which *Richard* gave the Mannor in taile to *Iſabell*, &c. all that is ſtood on, in the argument, is that of the Name; and in the MS. occurres alſo **icy fuſt dit que tout fuſt ſi utlaghe per ticl nome que il ne ſereit pas per tant atteint**, &c. **e auxi ſil fuſt endite per ticl nome que home ne irreit pas de ly arreiner**, &c. and ſo *Stonar* (as in the print) gives Judgment againſt the Conuſee. This caſe is remember'd in 11 *Aſſiſ.* pl. 4. And by 11 *Ed.* 3. *tit.* **Eſtoppell** 228. *Filius Thomæ* in Latine cannot be a ſurname; but, that its a good plea, to ſhew that the Party ſo deſign'd had a father of another name, its held 40 *Ed.* 3. *fol.* 22. *a.* 44 *Ed.* 3. *fol.* 12. *b.* and the Law hath been lately ſo taken, as you ſee in *Osborne*'s caſe, *Rep.* 10. *fol.* 132. *b.* For other authority, how *Filius* may be underſtood either as part of a name, as for a legitimate ſonne, or as a note of only natural relation, ſee 38 *Ed.* 3. *fol.* 22. *a.* 39 *Ed.* 3. *fol.* 11. *a.* & 25. *a.* 3 *Hen.* 4. *fol.* 14. *a.* 30 *Aſſiſ. pl.* 51. *per Seton.* 14 *Ed.* 3. *tit.* **Eſtoppell** 173. 13 *Rich.* 2. *tit.* **Breife** 645. 10 *Ed.* 4. *fol.* 12. *a. Curſon*'s caſe.

(4) *Eadem gratia Lincolnienſi Epiſcopo*] Nothing is more uſual of that time, than to find Biſhops, Abbots, Priors, and the like to have *Dei gratia* in their Titles. But later ages have appropriated it to Kings. *Lewes* XI. of *France* wou'd not endure, that *Francis* then Duke of *Bretagne* ſhould uſe it. See *Bodin. de Republica, lib.* 1. *cap* 10. and others noted in the *Titles of Honor, pag* 116.

(5) *In liberum Burgagium*] As free *Socage* in the country of lands, ſo free *Burgage* in Boroughs, and Cities, is the tenure of houſes, regularly, and they are the two baſe tenures in regard of *Knights ſervice*. *Burgagium, Socagium*, and *Feodum militare* make uſually *Bracton*'s tripartit diviſion. See him *lib.* 4. *tract. de Aſſiſ. mort. anteceſſoris cap.* 14. & *in cap. præcedent.* §. 3. of Burgage: *Revera terminatum eſt quod poteſt legari, ut catallum tam hæreditas quam perquiſitum per Barones* Londoniæ & *Burgenſes* Oxoniæ, *& ideò verum eſt quod in Burgis non jacet Aſſiſa mortis anteceſſoris*; that muſt be underſtood only of ſuch Boroughs as had by cuſtome their lands deviſable. See **Burgages devisables** in *Stat.* 11 *Ed.* 1. *Acton Burnell, Bract. fol.* 272. *a.* and *Thorpe* 21 *Ed.* 3. *fol.* 21. *b.* Tradeſmen that held theſe Burgages are the *Burgenſes* entended in *Stat. Merton, cap.* 7. where an heire of a Gentleman (a tenant by Knights ſervice) is diſparaged, if maried to *Burgenſis* or *Villanus*, i. e. either tradeſman or husbandman.

(6) *Vel Maritagium*] Although *Hengham* liv'd and wrote after *Weſtm.* 2. yet this, as other Examples of his *Writs of right* are, is of elder time then the Stat. *Bracton. fol.* 329. *a.* hath this verie writ in Subſtance, as of his time, and thither muſt *liberum maritagium* be refer'd. For cleerly ſince the Stat. of *Weſt.* 2. a writ of Right would not lie for lands held in Frankmariage.

(7) *Nec pro omni ſervitio*] But *Bracton*'s writ with that tenure hath expreſſely *Pro omni ſervitio.*

(8) *Portandi brevia*] Now *brevia* is appropriated to the ſignification of the King's Writs. Underſtand it in this tenure (which is mention'd alſo in *Bracton, fol.* 328. *b.* and *Regiſt. Orig. fol.* 2. *b.*) for letters of Meſſage, and the like. For, becauſe the King's Writ was a ſhort letter of command, therefore had it the name of *Breve*. So *Bracton, lib.* 5. *de Except. cap.* 17. §. 2. and, in the Civil Law, both *Breve* and *Brevis* are in like ſenſe. You may ſee *C. tit. de conveniendis fiſci debit. l.* 5. *de apochis public. l.* 1. *& tit.* 42. *lib.* 1. reſtor'd by *Gothofred*. Very often alſo for letters, *Breves* and *Brevia* occurre in *Theodoſius* his Code, *Caſſiodore*'s Precedents, *Symmachus* his Epiſtles, others of that time. The later *Grecians* call'd it βρέβιον & βρεβίον, yet thoſe are as ancient as *Julian* and *Euſebius*, who uſe them; and thoſe, which wrote them, they called βρεβιατόρες, or *Breviatores*, which I read in *Juſtinian's Auth.* 105. *cap.* 2. *ſi autem* §. 4. and an old Gloſſarie of the Law interprets βρέβιον by ἡ ἐπιτομή. Letters of preſentation given by an Earle in 45 *Ed.* 3. *tit.* **Exchange** 10. are titled **Breif de preſentation,**

Hic

Hic non dicatur, per annum.

Sunt autem hujuſmodi brevia infinita ſecundum diverſitatem eorundem ſervitiorum & tenentium, quod non eſt opus inſerere, vel ſic.

Rex tali ſalutem. Præcipimus tibi &c. de paſtura ad centum oves &c. vel ad X. *oves in* N. *quam clamat pertinere ad liberum tenementum ſuum quod de te tenet in eadem villa per liberum ſervicium &c. ne amplius &c.* vel ſic.

Rex tali ſalutem. Præcipimus tibi &c. tali de tribus carucatis terræ &c. quas clamat tenere de te per ſervitium unius Militis, vel *inveniendi tibi duos homines equites* vel *pedites ad eundum tecum cum arcu & ſagittis in exercitum per tantum tempus,* vel *per ſervicium decem ſolidorum* (9) *quando* XL. *ſolidi capiuntur de ſcuto,* vel *per ſervitium* (10) *unde decem carucatæ terræ,* vel *tot Hydæ terræ faciunt feodum unius militis pro omni ſervicio.*

Hic non dicitur, per annum.

Breve de *recto de dote* ſemper debet dirigi hæredi viri vel ejus cuſtodi, ſi hæres infra ætatem extiterit, niſi tenementum illud devenerit in manus capitalis domini pro defectu hæredum; quia tunc debet dirigi capitali domino, ut inferius patebit ſuo loco.

CAP.

(9) *Quando* XL. *ſolidi cap. de ſcuto*] So in *Bracton* alſo is the Service expreſt. But the *Regiſter, fol.* 2. *a.* hath a note that makes this forme obſolet. Now it ſhould be, *per ſervitium quartæ partis unius feodi militis, &c.* Eſcuage here is apparently ment. Neither had the antients any more particulars in denoting it, neither by them was it reſtrained to warre againſt the *Scots* or *Welch* only, as by later autoritie it ſeems to be, where only *Scotland* and *Wales* are ſpoken of, as in *Littleton, Fitzh. Nat. Br. fol.* 83. *C. Regiſt. Orig. fol.* 88. *a.* 19 *Rich.* 2. *tit.* Gard. 165. *Plowd. Comm. c. Rice Thomas, fol.* 129. *b.* and elſewhere. In the Red book of the Exchequer, *Alexander,* Archdeacon of *Shrewsbury* under *Hen.* 3. relates an Eſcuage of two Marks out of everie Knights fee in 7 *Hen.* 2. for the enterprize againſt *Tholouſe*; in 8 *Hen.* 2. one Mark for the ſame purpoſe; in 18 *Hen.* 2. XX. s. *pro exercitu Hiberniæ,* and others he hath for warre in *Normandie, Poiters,* elſwhere under *Rich.* 1. and King *John.* And that they were ſuch as are now underſtood in our tenure by Eſcuage, will more openly appear in *Rot. Clauſ.* 16. *Johannis memb.* 24. *in dorſo,* where the *Scutagia Pictaviæ* are at large in a Catalogue; as, *Willielmus de* Cantebrigia, *quia habuit milites ſuos cum domino Rege in* Pictavia, *habet Scutagium.* And there is alſo *Mandatum eſt Domino* Petro *Wintonienſi Epiſcopo* (he was then cheif Juſtice of *England*) *quod habere faciat* Willielmo *Comiti* Arundell *Scutagium de* XVI. *feodis militum quæ* Robertus *de* Tateſhale *qui eſt in Cuſtodia ſua de Domino Rege tenet in capite S. de ſcuto* III. *marcas,* which paſſage I ſufficiently underſtand not. If *Tateſhale* were in ward to the Earle (as ſo it muſt be taken) either by the King's grant or otherwiſe, why ſhould he pay eſcuage? If his land held in *capite* were to him by diſcent, how came the Earl to the wardſhip? except by grant. Admit he had it by purchaſe, why ſhould the Earle have the eſcuage? except by way of liberate from the King's bounty. Very many other eſcuages are there, as *Henricus de* Tayden *habet Scutagium de feodo* VI. *militum ad opus filii ſui qui eſt in Pictavia. Robertus de* Cardman *de* LX. *&* XIV. *feodis militum pro filio ſuo qui fuit in Pictavia. Thomas* Pannell *habet auxilium* L. *librarum Juronenſium de liberè tenentibus ſuis & aliis de inſula de* Gereſey. But for the default of tenants not coming to the armie, a place in the Leiger book of *Abingdon,* in the hands of my Noble and much-deſerving friend, that beſt furniſht Antiquary Sir *Robert Cotton,* is worth obſervation. *Eſt juxta* Abbendune *Burgum* (are the words) *unius militis manſio quæ* Lea *vocatur. Hanc* Willielmus *Regis Camerarius de* Landonia *tenebat.* This *William* held it of the Abbey, and by Knights Service; in 2 *Hen.* 1. forces were levied to encounter *Robert* Duke of *Normandie,* which *Faritius,* Abbot of *Abingdon,* requir'd of *William* his tenant to find him a man for the armie, as his tenure bound him to do; but *William* denied it, whereby the Abbot was driven by other means to ſupply the number of his part. The Abbot afterward, *tamdiù* (as the book ſaith) *in præſentia ſapientum, hanc rem ventilari fecit, ut ille neutrum negaret, imò fateri ſic eſſe vera ratione cogeretur. Unde cum* lege patriæ *decretum proceſſiſſet ipſum exortem terræ meritò deberi fieri, interpellatione bonorum qui intererant virorum reddidit terram illam illi*; and ſo the tenant under faire conditions had his land again. This Lea is now called Beſiles-Lee, and is of the poſſeſſions of the *Fettiplaces.*

(10) *Unde decem carucatæ, &c.*] This forme alſo is diſallowed by the *Regiſter.* But when it was in uſe, no particular quantity of the ſervice was expreſt, becauſe the land by references to a Knights fee ſhewed its own Services. *Bracton, lib.* 5. *tract.* 1. *cap.* 2. *ubi quantitas feodi exprimitur in quantitate terræ petitæ, non ponitur aliquod ſervitium, quia in quantitate feodi oſtenditur quantitas ſervitii*; it being all one in ſubſtance to ſay that one holds IIII. *carves, whereof* VIII. *make a Knights fee,* and that he holds ſo many acres or carves *per ſervitium dimidii feodi militis.* Carves and Hides are uncertain quantities, yet by that name diviſion was antiently made in levying *Hidage* and *Carucage.* See what is noted in *Titles of Honor, pag.* 270. *& ſeq.* and *in Codice Abingdoniæ, pag.* 42. *Goffredus de* Ver *Albrici filius* gives to the Abbey ſome poſſeſſions *Cum duarum hidarum duodecies* XX. *acrarum terra diſterminata,* & *Hen.* 1. gives to *Maurice* Biſhop of *London, duas hidas de duodecim* XX. *acris,* ſo that there 240 acres is taken for a *hide.* In the Monks ever with one conſent almoſt, it is alwaies a *Plough land*; and St. *Dunſtan* in the

CAP. II.

Quæ placita pertinent ad Majorem Curiam *Domini Regis, & quæ ad* Vicecomites *provinciarum pertinent placitanda.*

COnſtat quod placita de *Crimine læſæ Majeſtatis*, ut de *nece* vel (11) *ſeditione* perſonæ Domini Regis vel regni vel *exercitus*, *homicidio*, *raptu*, *incendio*, *roberia*, *pace* domini Regis *fracta*, *crimine falſi*, & ſi quæ ſunt ſimilia, ubi ſcilicet imminet periculum (12) Vitæ & Membrorum, ad (13) *Curiam*

yeer DCCCC. LXIII. gives *terræ partem ſeptem Aratrorum, quod Anglicè dicitur ſeptem hydas.* Its *in Cod. Chart. Arch. Cant.* Thus ſhould *Hida* and *Carucata* be all one, for *Carucata* ſpeaks the Plough. *Charou* in *French* ſo ſignifying, as *Littleton* alſo notes; *but by ancienter autority Caruca* is not a Plough, *but a* chariot, or *ſuch like, as* Carrucâ cum junctura Legatâ, mulæ quoque Legatæ, *which is found in* Jul. Paull. Recept. Sentent. lib. 3. tit. 7. *where the old Interpreter hath* Carpentum *for* Carruca. *In like ſenſe is* Carruca *in* (1) Martiall, (2) Plinie *and others.* It ſeems when Hidage or Carucage was granted, the commiſſioners for levying it (with aid of Jurors) uſed in every Shire to aſſeſs how much ſhould be in certain reckon'd for a Hide or Carve. As in 9 *Rich.* 1. when an aid of five Shillings, of everie Carve in the land, was to be levied, *qui electi fuerant & conſtituti ad hoc negotium regis faciendum, ſtatuerunt per æſtimationem legalium hominum; ad uniuscujuſque Carucæ Wainagium centum acras terræ.* Here 100 acres were for that purpoſe a Hide. See *Roger de Hoveden fol.* 442 & 443. Neither is any difference 'twixt *Carucatæ* & *Carucæ wainagium.* For *wainagium* is **tulth** as its *Engliſht* in the ancient *Engliſh* of *Magna Charta*, or **Gainage**, as its called *Weſtm.* 1. *cap.* 17. See *Bracton, fol.* 37. *a.* 4 *Ed.* 2. *tit.* **Avowry** 200. and eſpecially *Lowe*'s caſe in *Rep.* 9. *fol.* 123. *b.* & *ſeq.*

(11) *Seditione perſonæ Domini Regis*] *Bracton, fol.* 118. *b. Si aliquid egerit vel agi procuraverit ad ſeditionem domini Regis vel exercitus ſui, &c.* ſo *Glanvil, lib.* 1. *cap.* 2.

(12) *Vitæ & Membrorum*] **Judgment de vie & de membre** is us'd for judgment of death, or puniſhment capital, in *Stat. Weſtm.* 2. *cap.* 38. 3 *Ed.* 3. *fol.* 19. *a. pl.* 34. *in* 18 *Ed.* 3. *fol.* 32. *a. pl.* 5. 13 *Ed.* 3. *tit.* **Utlarie** 49. and elſewhere often. But anciently alſo part of it is taken for judgment of *loſſe of life*, and part for *loſſe of member* only, as in *Weſtm.* 1. *cap.* 15.—**pur le quel un ne doit perdre vie ne membre.** And *Bracton* ſpeaking of Puniſhments, *lib.* 3. *tit. de Actionibus, cap.* 6. ſaith, *ſunt quædam quæ adimunt vitam, vel membrum*; and the like hath he in *tract. de Corona, cap.* 36. *majora crimina aliquando ultimum inducunt ſupplicium, aliquando membrorum truncationem.* One flying to a Sanctuarie, by the laws of *William* 1. had **pais de vie & de membre**, as the words of it are in the book of *Crowland.* And *amiſſio membrorum* was a ſpecial puniſhment of Rape before *Weſtm.* 2. as you ſee in *Bracton, lib.* 3. *tract. de Corona, cap.* 28. He that was condemned loſt his Eies and his Stones; but by *Glanvil*, before *Bracton*, it appears it was death, *lib.* 14. *cap.* 6. But that the **judgment de vie & de membre** in *Weſtm.* 2. *cap.* 38. was only judgment to be hang'd, and ment, about that time, to be ſo, is plain by the book attributed to *Breton, cap.* 14. where the autor hath reference to the Statut. of *Weſtm.* 2. made in 13 *Ed.* 1. which obſerve alſo for another purpoſe. Its commonly affirm'd, with one conſent, that (3) *John le Breton*, Biſhop of *Hereford* under *Hen.* 3. and *Ed.* 1. wrote that Book. But its cleer that this *John* the Biſhop was dead ten yeers before the Stat. of *Weſtm.* 2. here cited. For he died in 3 *Ed.* 1. which the ſtory of *Florilegus*, the Monk of *Weſtminſter*, enough juſtifies; yet, that no ſcruple in that may remain, its to be prov'd alſo by infallible record. In *Rot. Pat.* 3 *Ed.* 1. *memb.* 203. the **conge d'alier**, for choice of a new Biſhop there relates, *quod cum eccleſia veſtra* Herefordenſis *paſtoris ſolatio per mortem bonæ memoriæ* Johannis *nuper* Herefordenſis *Epiſcopi ſit deſtituta, alium vobis eligendi in Epiſcopum, &c.* this was 23 *Maii*; and in *Memb.* 19. of the ſame roll, the royall aſſent is given to the choice of *Thomas de Cantilupo* ſucceſſor to *John le Breton* being dead. All this is moſt certain; and it is as certain, that, about that time, was a Judge of this name; for in *Rot. Clauſ.* 51 *Hen* 3. *memb.* 12. *Mandatum eſt* Richardo *de* Ewell & Hugoni *de* Jurri *Emptori Garderobæ domini Regis quod habere faciat dilectis & fidelibus ſuis* Johanni le Breton, & Henrico de Monteforti *Juſticiariis ſuis* Robas *ſuas integras prout cæteris Juſticiariis domini Regis invenire conſuevit, quamdiu ſteterint in officio domini Regis*; and the *Dorſ. Rot. Pat.* of that yeer hath moſt frequent mention of *John le Breton*, and *Henry de Bracton*, for Judges of ſpeciall Aſſiſes: He is ſometimes called *Bretun*, then *Briton*, and alſo *Breton*; and *Florilegus ſub anno* 1275. *Obiit hoc anno* Johannes Bretoun *epiſcopus* Herefordenſis, *qui admodum peritus in juribus*

(1) III. 47. 62. XII. 24. (2) Nat. Hiſt. lib. 33. cap. 11.

(3) Matth. Weſt. ad an. 1275. — Pitſeus an. 1275. 397. — Baleus Cent. 4ta. vit. 44. — Hiſt. Eccl. Magdeburg. Cent. 13a. c. 10—14. Herefordienſes Godwin. Comment. de Præſ. Angl. inter Ep. Herefordienſes 43. Stamf. Prærog. Reg. fol. 21. a. 10 Co. Pref. Cowell's Int. Wingate's Coll. to his Edit. of Britton.

(13) *Curiam* domini Regis *majorem* pertinent audienda & determinanda. (14) *Placita* vero de *furtis*, (15) *melletis*, (16) *hutesio*, *plagis*, *verberibus*, *transf-*

Anglicanis, librum de eis conscripsit, qui vocatur le Bretoun. That there was a Judge of that name, and that about that time one of that name was Bishop of *Hereford*, here appears plainly, and that a book of common law, called le Bretoun, was written, and by the Bishop, if you believe the Monk, and the consent of late writers which speak of it. But what book ever the Bishop wrote, it cannot be this we have now left under that name, unless you will allow that one dying in 3 *Ed.* 1. could cite a Statut. of 13 *Ed.* 1. as our *Breton* doth in this of Rape, or the Stat. of 6 *Ed.* 1. of *Cessavit* at *Gloucester*, as he doth in his chapter de purchase conditionel, or the Stat. of *Winchester* of 13 *Ed.* 1. as he does touching high waies, in his chapter de plusors torts. Some other author then, then the Bishop of *Hereford*, must be sought for that volume. This, by the way. For Judgment de membre, anciently it was in Appeales of *Maihem*; to this day the count is *felonicè*, but nothing but damages are now recoverable, nor was the law otherwise under *Ed.* 3. as appears by 22 *Assis. pl.* 82. 41 *Assis. pl.* 16. and other books. But before that time, the party attainted lost membre pur membre, as its said 18 *Ed.* 3. *fol.* 20. *a. pl.* 31. with which agrees *Breton, cap.* 25. where is added si la pleint soit faite de femme que avera tolle a home ses membres, en tiel case perdra le femme la une mein per judgment, come le membre d'ont el avera trespasse; and if a Knight were strook by a Ribaud per felonie sans desert de chivaler, the Ribaud (saith the book) was to lose his hand; and it appears in *Glanvil, lib.* 14. *cap.* 1. and *Bract. lib.* 3. *tract. de Corona, cap.* 24. that the trialls of mayhem were by duell or ordells, as of capitall offences. See *infra pag.* where if the husband had been, by judgment, *demembratus*, the wife lost her dower; and for particulars see there more, and the notes. By K. *Knout*'s laws, *cap.* 50. Adulterie in the woman was punisht by losse of Nose and Eares, to which, it seems, reference is in that of *William* 1. his laws in the MS. *Ingulphus*, Si femme est judgee a mort u a defacium des membres Ri seit enceintee; that justice should not be executed till she be delivered, which in judgment of death is law at this day; and in *Fleta, lib.* 1. *cap.* 38. for petit larcenies, or cutting of purses with nothing in them, the Pillorie and losse of Ears was the punishment. See 10 *Hen.* 3. *tit.* Corone 434. And in *Fleta, lib.* 2, *cap.* 5. of every common whore following the Court, the Marshall, at the first apprehension, was to exact 4 *d.* at the second, to bring her before the Steward, who was to take her name and forbid her the Court; at the third, *considerabitur quod amputetur ei tressorium, & quod tondeatur*; at the fourth, *amputentur ei superlabia, ne de cætero concupiscantur ad libidinem.* At this day, saving for striking in the presence of the King or his Courts, no losse of member is in use by course of common law. Ancient and late examples are of punishment of such striking by losse of the right hand, in 22 *Ed.* 3. *fol.* 13. *a.* 19 *Ed.* 3. *tit.* Judgment 174. 39 *Assis. pl.* 1. 33 *Hen.* 4. *Br. tit.* Paine 16. *Stamford fol.* 38. *a.* & 2 & 3 *Eliz. Dy. fol.* 188. *b.* By late Statutes, for some offences the hand or eares are to be cut off.

(13) *Curiam Regis Majorem*] He calls that *Curia Major* here, which hath conisans of all capitall offences; and in his following chapters the same name he uses for the Court, whither by *Pone*, a suit in a writ of right is to be remov'd, that is cleerly the *Common Pleas*; and *Bracton, fol.* 105. hath *loquela à Comitatu transferri potest ad Magnam Curiam*, where often to him *Magna Curia* is the *Common Pleas* plainly. So doth he use the same title in *fol.* 332. §. 14. and often elswhere. But it seems, that to *Hengham*, *Major Curia* is no singular name for any one Court, but for any of those of the King's highest Courts, which have that name in regard of all inferior; and the subject which he speaks of with it, may designe what court he means; as here, that he means the King's Bench, or *Aula Regia* (as *Bracton* calls it, *fol.* 105. *b.* §. 2.) appears by the crimes recited afterward; when he talks of a *Pone* to remove the suit of a writ of right into *Major Curia*, there it must be the *Common Pleas*. And it seems in *pag.* 16. he takes the name expressely as well for the Court of *Justices in Eire*, as for the *Common Pleas*. Note the words: *Quamvis essonium de malo lecto in* Majori Curia *Domini Regis, utpote ad* Bancum *vel in* Itinere Justitiariorum *jaci debeat tertio die, &c.*

(14) *Placita verò de furtis*] How the law hath been since taken touching pleas of the Crown to be *Viscontiel*, is taught in *Stamford, lib.* 1. *cap. ult.* & *lib.* 2. *cap.* 14. No capitall offence was, by this opinion, to be heard and determined in the county. For though he name *Furta* here, it seems, he means not that theft which is capitall, but as *Furtum* is in the Civill law, so he understands it, that is, only for wrongfull taking away goods, as the word Roberie is us'd in *Westm.* 1. *cap.* 37. And all other kind of felonious taking our autor comprehends before, in *Roberia*; which in those times expresst also all felonious taking, or *Furtum* in that sense, as its now us'd, witnesse *Bracton* cited by *Stamford, fol.* 27. *b.* yet in *Glanvil, lib.* 1. *cap.* 2. *Furtum* is excepted to the Shirifs Court, as out of such offences *quæ ultimo puniuntur supplicio aut membrorum truncatione.* It's no doubt but *Hengham* in writing this, had regard to *Glanvil*, as it may appeare by the same words in both; so had *Bracton* speaking of this matter, *lib.* 3. *tract. de Corona, fol.* 154. *b. Ad vicecomitem pertinent hujusmodi placita in Comitatu. Cognoscere quidem potest de medletis, plagis, verberibus, & consimilibus, nisi querens adjiciat de pace domini Regis infracta, vel feloniam apponat. Extunc n. se vicecomes non debet intromittere, cum hoc tangat personam ipsius domini Regis & coronam suam.* But he says the Coroners were to inroll Appeals of capitall offences, and present them in the Eire. So that in those times, by *Bracton*'s opinion, if one had sued criminally in the county, and concluded *contra pacem domini Regis, &c.* the Court had not jurisdiction, but if *contra pacem vicecomitis*, then it had; so is his difference there and *pag.* 145. *b.* For in the one case, Judgment de vie ou de membre or imprisonment was to follow, in the other only amerciament, or *pœna pecuniaria*, as he calls it. But see this autor, *pag.* 21. where he

tranſgreſſionibus, (17) ubi non agitur de pace domini Regis fracta, ad *vicecomites* pertinent audienda & determinanda. De placito verò terræ, ſimiliter poteſt vicecomes cognoſcere quemadmodum quando placitum aliquod divertitur a *Curia Baronis* propter defectum ipſus Curiæ, & quando convenitur ipſe tenens in *Comitatu* abſolute; ex quo dominus feodi non poteſt ex officio facere (18) hanc Aſſiſam in Curiam ſuam venire, videtur quod non defuit petenti de recto, quando non (19) falſat. Tunc ipſe petens ſupplicabit capitali domino ut remittat ei Curiam ſuam. Et tunc poteſt ire bene ad *Comitatum* ſi velit. Et hæc eſt cautela neceſſaria.

CAP.

he ſpeaks of appeals *ſine brevi*. Appeals then might be taken or commenced, but not determined, in the County, if they were *de pace Regis fracta*; ſo it ſeems. See *Stat. Mag. Chart. cap.* 17. which belongs hither. Neither is it amiſſe to remember a judgment given in the time of *Hengham*, and before him in 30 *Ed.* 1. not from the matter here ſpoken of. It is in *P.* 30 *Ed.* 1. *MS. fol.* 280. *a.* where the Shiriſe of *Yorkſhire* is commanded **que il feiſt venir le appel** Jon de Morton **enſemblement ove** Jon de Thouthorp **attache per ſun appel ove tote les choſes meme le appel touchans devant Juſtices en Bank per breve de la Chancelerie. Le quel retorna ſon breve que il avoit maunde au Meyre & a Bailiffes de la ville de** Everwike, **&c. les queux reſponent que** Jon de Morton appela Jon de Thouthorp **que il ly aſſeply a ſaut purpenſe le demaine prochein devant la feſte de ſeint Nicholas en la ville de** Everwike **en** Steyngate **e illenke ly robba de un tabbard priſ de treis ſous e de duſſe deniers d'argent contra la pees,** &c. **Demand fut au Meyre la manere del attachment, e ſyl y fut** Meinoure, **& par queu garrant ils tenent teu maner de play, il diſt que** Jon de Morton *leva* **la** mene ſur Jon de Thouthorp **etroba pleges de ſuer ſon appel au Coroners de la ville per quex eus le attacherent e le priſſent e tinozent le play en lur Gyldhalle de ceſt appele per uſage de la Cytie uſee deteus d'ont il ne ad memorie a tener ſans breve e ſans** Meynouere **ou** Pulfre, **&c.** *Et quia ſecundum legem & conſuetudinem regni, major & Coronatores alicujus Civitatis hujuſmodi appella coram eis audire non poſſunt, & terminare, niſi eorum cognitio per Cartam domini Regis vel progenitorum ejus vel per breve domini Regis de hujuſmodi appello coram eis audiendo & terminando ſpecialitèr ſit conceſſa, cum ea ad dominum Regem ratione juris ſui Regii & non ad alium, in Regno Regis, pertineant, Conſideratum eſt quod appellum prædictum coram ipſis Majori & Coronatoribus habitum, tanquam coram eis qui nullam in hujuſmodi caſu habent juriſdictionem adnulletur & pro nullo habeatur. Et quia prædicti major & Coronatores nullam in Curia hic* manuopus *vel* pelfrum *proferunt, nec Idem* Johannes de Morton *ſolempnitèr vocatus appellum prædictum in Curia hic proſequitur, Viſum eſt Curiæ quod ad ſectam domini Regis verſus prædictum* Johannem de Thouthorp *in Curia hic non eſt procedendum. Et ideo prædictus* Johannes de Thouthorp *inde ſine die. Et ad judicium de prædictis Majore & Coronatoribus qui appellum illud tenuerunt ſine warranto.* Theſe are the words of my report verie anciently written. I tranſcrib'd it all, becauſe divers things are in it ſpecially obſervable.

(15) *Melletis*] *Glanvil* and *Bracton* have *de Medletis*, for ſuddain affraies or diſlikes; the word is ſo us'd too in *Regiam Majeſt. lib.* 1. *cap.* 3. and hence is our **Chaunce medley**, corrupted from *Chaud melle*, which ſignifies *hot* or *ſuddain debate*; whence, in *Scotland, Chaud melle* is oppos'd againſt **Forethought felony**, as **Manſlaughter** with us, againſt **Murder.** See *Skene ad citat. loc. & de verb. ſignific.* But **Chance medley** is in *Stamford* otherwiſe. *Skeen* interprets *Chaud melle* by *Rixa* in the Civil Law.

(16) *Huteſio*] Although *clamor & Huteſium* is for huy and cry in our law, yet it ſeems here it's a word made from *Hutin*, i. e. *ſcolding, brawling, contention*, whereby the peace of the county was diſturb'd. For all the reſt here ſpoken of are offences, 'mongſt which you cannot well reckon **Huy and Cry**; although of that the Shirif had power to determine, if it grew in queſtion 'twixt the appellant and appellee, *utrum appellans huteſium levaverit. Bract. lib.* 3. *fol.* 145. *b.* §. 2.

(17) *Ubi non agitur de pace domini Regis fracta*] He means, when the plaintiff or appellant did not complain of the King's peace broken, but only of the peace of the Shirif. So *Bracton* teaches the law of that time, that if, for the like, ſuits were in inferior Lords courts, the concluſion was *contra pacem Domini*; if in the court of a corporation, *contra pacem Ballivorum*; if in the Shirif's, *contra pacem Vicecomitis.* Neither means *Hengham* that thoſe offences were not in themſelves *contra pacem Regis*, but that in the ſuit commenced in the Shiriſs court the King's peace broken might not be complain'd of; which well agrees with, and explanes the law now, that, without writ, the Shirif cannot hold plea *de tranſgreſſionibus contra pacem domini Regis*, as it appears in *Fitzh. Nat. Br. fol.* 47. A.

(18) *Hanc Aſſiſam*] Suppoſing the miſe to be put on the grand aſſiſe.

(19) *Falſat*] That is, by oth prove that the Lord's court hath fail'd him of right; the two following chapters have more of it; and ſee *Bracton, lib.* 5. *fol.* 329. & 330. where the falſifying (as it was call'd) of the Lord's court is by oth taken by the demandant, with two others, in the Lord's court, or at his mannor houſe; but *Hengham* allows it by the oth only of the party; this *Bracton* ſtiles *defalta probata.* Touching this obſolet uſage, a caſe of 11 *Hen.* 2. is worth obſerſervation. Its related in *Roger de Hoveden, pag.* 283. when *Thomas Becket* deſir'd the King, he might, with his leave, go viſite Pope *Alexander*, then commorant in *France*; the King anſwer'd him, *Tu priùs reſpondebis mihi de injuria quam feciſti* Johanni Mariſchallo meo *in Curia tua. Conqueſtus n. erat Regi idem* Johannes *quod, cum calumniatus eſſet in Curia Archiepiſcopi terram quandam de illo tenendam jure hæreditario, & diù inde placitaſſet, nullam inde potuit aſſequi juſtitiam,* &

CAP. III.

De jurisdictione Curiæ Baronis *& qualitur procedendum est in eadem.*

QUodlibet autem breve de *Recto*, præterquam breve *paruum secundum consuetudinem manerii*, debet esse patens, & *præcipe in capite* clausum, & debet deferri in Curia ipsius Baronis de quo ipse petens clamat tenere terram petitam. Potest autem petens si voluerit in Curia illa prosequi loquelam suam usque ad discussionem litis per narrationem narratam, vel feriationem duelli. Sed si tenens posuerit se in *Magnam assisam* domini Regis in Curia illa, remanebit loquela illa hoc modo. Tenens ille adibit Curiam & habebit breve Regis ad vicecomitem loci, per quod breve idem vicecomes prohibebit dicto domino feodi ne teneat placitum in Curia sua, nisi duellum fuerit inde vadiatum, eo ordine quo rex mandat quando hujusmodi placitum deducitur in Comitatum. Et tenens semper gaudebit essoniis suis tam de *malo veniendi* quam de *malo lecti*. Tamen in adoptione petentis erit, si voluerit in eadem Curia tam diu deducere placitum suum, vel non. Qui si voluerit abinde recedere, adeat ballivum Regis & probet sacramento suo (20) vel per duos testes Curiam domini sibi de recto defeciisse, & sic velit nolit dominus ipsius Curiæ, etiam invito ipso tenente, potest hujusmodi loquela sic transferri ad comitatum. Et quid si Curia ipsius Baronis non defecerit ipsi petenti de recto, qui sic transtulerit loquelam suam ad comitatum? Certe dominus illius Curiæ, si voluerit, potest retrahere loquelam illam in Curiam suam, & eam ibi terminare ordine prædicto; dum tamen sufficienter probare poterit curiam suam de recto dicto petenti non defeciisse. Videtur autem quod idem Dominus Curiæ potest adeo simpliciter procedere in hujusmodi probatione, sicut potest dictus petens in probatione falsandi curiam suam. In *Majori* autem Curia domini Regis, potest idem Dominus facere consimilia; tamen rarò contingit. Paruum enim seu nullum dominis curiarum in hujusmodi placitis tenendis proficuum ascribitur. Et sciendum quod in *Curia Baronis* (21) non debet *Attornatus* aliquis admitti sine brevi domini Regis. Potest equidem dominus alicujus curiæ si voluerit ex gratia per literas suas patentes scribere domino Regi quod remisit ei curiam suam, si tantum diligat ipsum petentem; qua litera porrecta in Cancellaria domini Regis, petens ipse habebit suum *præcipe de recto*, diretum vicecomiti, per quod precipiet tenenti quod reddat terram petitam, & nisi tenens hoc fecerit & ipse petens fecerit ipsum vicecomitem securum de clamore suo prosequendo tunc summoneatur ipse tenens quod sit ad certum diem in Banco. Et sic ante aliquem ingressum litis in curiam comitatus vel Baronis, potest hujusmodi loquela vel placitum primo die diverti ad *Curiam* domini Regis *Majorem*.

& quod ipse Curiam *Archiepiscopi* falsificaverit *secundum consuetudinem regni, cui Archiepiscopus respondit, nulla Justitia defuit* Johanni *in Curia mea, sed ipse (nescio cujus consilio an propriæ voluntatis motu) attulit in curia mea quendam* **Toper** & juravit super illum quòd ipse pro defectu Justitiæ a Curia mea recessit, *& videbatur Justitiariis curiæ meæ quod ipse injuriam mihi fecit, quia sic a Curia mea recessit, cum statutum sit in regno vestro,* Quod qui curiam alterius falsificare voluerit oportet eum jurare super sacrosancta evangelia. *Rex quidem, non respiciens ad verba hæc, juravit, quòd ipse haberet de eo justitiam & Judicium. Et* Barones curiæ Regis *judicaverunt eum esse in misericordia Regis, & quamvis Archiepiscopus niteretur judicium illud falsificare, tamen prece* & consilio Baronum *posuit se in misericordia Regis de* D. *libris & invenit ei fideiussores.* That **Toper** was a Church Book of the time, and it is what in a Constitution of *Robert Winchelsey* is call'd *Troperium* in *Lindw. Provinc. constit. de Eccles. ædific. c. ut Parochiani.* Of this falsifying, more in *Breton, fol.* 275. according to *Bracton*; and the *serviens domini Regis* in *Bracton* appears to be Bailif of the Hundred, or some such minister.

(20) *Vel per duos, &c.*] If you read *&*, then agrees he with *Bracton* and *Breton.*

(21) *Non debet Attornatus aliquis*] Examine it by *Breton, cap.* 126. *fol.* 286. *a. Stat. Merton, cap.* 10. *Regist. Orig. fol.* 26. *&* 27. *Temps Ed.* 1. *tit.* **Attorney** 106.

CAP. IV.

Qualiter procedendum eſt in Comitatu *poſt* Curiam Baronis *alicujus falſatam. Breve* de Pace. *Recordum* Comitatus. Falſum judicium *in Comitatu.* Sectatores.

PRobata ſiquidem ea ſolennitate qua decet, quod *Curia Baronis* defecerit hujuſmodi petenti de recto, poteſt ipſe petens in eadem curia proſequi loquelam ſuam ſi voluerit in omni eventu, uſque ad diffinitam diſcuſſionem litis. Hoc tamen excepto, ſi tenens poſuerit ſe in magnam aſſiſam domini Regis ſuper repetita. Et ſi tenens ſic ſe poſuerit, ad proximum ſequentem Comitatum, gaudere poteſt eſſonio, ita quod in ſecundo comitatu protendat in pleno comitatu (22) breve *de pace* quod vocatur *prohibemus.* Tunc remanebit loquela ad petitionem tenentis uſque dum venerint (23) *Juſtitiarii ad omnia placita.* Ex hoc liquet quod nec dominus alicujus feodi, nec vicecomes regis, qui major eſt in juriſdictione, poſſit aliquem liberum hominem (24) ad corporale ſacramentum ponere ſine brevi domini Regis; quod ſi facere poſſent, & tam dominus ille quam vicecomes ex officio ſibi commiſſo hujuſmodi *magnas aſſiſas* caperent ſuis locis. Caveat rurſus reus ſibi qui ſe ſic in illam aſſiſam regalem poſuerit quod dictum breve *de pace* deferat ad proximum comitatum vel ſecundum, ſalvato tamen per eſſonium primo Comitatu poſt talem poſitionem. Quod ſi non fecerit, ad calumniam petentis per præciſam amiſſionis defaltam, ſe ipſum ac perpetuam ejus ſucceſſionem privare judicabitur de petitis. Hanc vero defaltam habet Comitatus determinare & inde Recordum in omnibus (†) Curiis reportare, quicquid erit in Comitatu in hujuſmodi placito, ante poſitionem in magnam aſſiſam vel duelli vadiationem. Etiam, ſi apparentibus partibus quereletur & reſpondeatur, ſive loquela per nontenuram vel per quemcunque (*) bipertijocum cavilletur lis illa, dummodo detur dies ad proximum Comitatum partibus, ad petitionem petentis, per breve quod dicitur *Pone*, poteſt transferri negotium, ſive placitum illud fuerit, coram juſtitiaris in *Banco* vel *Itinerantibus* in ipſo Comitatu. Et ſic adnihilabitur proceſſus inde habitus, & ſtat breve. Petens autem quicunque fuerit moderatâ gratia poteſt habere *Pone*. Supponendum eſt n. quod procraſtinatio petitionis non præjudicat occupanti. verbi gratia. Si Peterem a te fundum hodiè mihi reſtitui, quod me procurante differtur, poſſit a caſu tibi occupanti proficere; ideò quia ponere aliquam loquelam extra comitatum ubi celerior litis habetur determinatio quam in banco * & quia preſumitur quod petens petitionem maturare debet. Et ſic patet, quia

(22) *Breve de Pace*] Mention is of this courſe *Temp. Ed.* 1. *tit.* Droit 45. and precedents are of the writ in *Glanvil, lib.* 2. *cap.* 8. and *Bracton, fol.* 331. §. 5. See alſo *Breton, fol.* 277. *b.* & *Regiſt. Orig. fol.* 7. *b.*

(23) *Juſtitiarii ad omnia placita*] Juſtices in Eire; which were in ſom like nature to the now Juſtices of aſſiſe, but had not their circuits ſo often. The beginning of them was in 22 *Hen.* 2. which was by Example after followed. See *Hoveden, pag.* 313. & 337. & *Gervaſ. Tilburienſ. in Dialogo de ſcaccario.* But it ſeems great delay of juſtice might ſo have been. For the Eires were not verie frequent; and by ſome, the diſtance of them was VII. yeers. So ſaies *Scrope* in *Temps Ed.* 3. *fol.* 143. *a.* and ſee *fol.* 149. *a. Aldenham. Glanvil* ſpeaks not of them in this caſe, it being not in uſe in the infancie of Eires, to have the *prohibemus* referr'd to them; ſucceeding time brought in that, and about *Ed.* 3. the Eires were left.

(24) *Ad corporale ſacramentum ponere &c.*] *Bracton, fol.* 106. *a. Non poteſt aliquis Baro, vicecomes vel alius de liberis tenementis cognoſcere, nec tenens tenetur reſpondere ſine præcepto vel warranto domini regis nec poſſunt aliquem de hujuſmodi ad ſacramentum ſine warranto compellere.* See *Stat. Marlb. cap.* 23. 44 *Ed.* 3. *fol.* 19. *b.* & 39 *Ed.* 3. *fol.* 35. *b.* Touching being compelled to oath without warrant of the King, ſee the caſe, *T.* 35 *Ed.* 1. recited in *titles of honour*, pag. 263.

(†) Al. *brevibus.* (*) Al. *bipartivocum.*

prorogat quod (25) congerere debet petens, ex gratia curſoria conceditur ſibi *Pone*, Tenenti autem nequaquam, niſi ex gratia majori, & cauſa ſpeciali, utpote, ſi vicecomes loci fuerit de ſtipite conſanguinitatis vel aliqua affinitate *ſive particeps in petitione petentis*, vel aliquantiſper rei offenſa ſeparaverit vicecomitem a tenente; ex dicta cauſa ſive aliqua alia rationabili interveniente innuitur tenenti dictum *Pone*. A vicecomite vero prefixo die litigantibus in Comitatu, ad primum comitatum poteſt tenens facere defaltam. Caveat tamen quod infra XV. dies terram ſuam replegiet, quod ſi non fecerit, ſeiſinam perpetuam, niſi aliunde recuperet, amittet: vel ad primum Comitatum poteſt eſſoniari de *malo veniendi*, & ad ſecundum facere defaltam & ad tertium de *malo lecti*. Eſſonium autem de *malo lecti* ſemper ſequitur eſſonium de *malo veniendi*, & non econtra. Tamen vicecomes ex officio ſuo mittere debet quatuor milites de eodem Comitatu ad videndum infirmum, eo ordine quo faceret ſi placitum eſſet in Banco; & ideo præcipietur ei hoc idem facere per breve de judicio. Ipſi quoque milites, ſecundum quod infirmus ſurgere aut languorem capere elegerit, præfigant ei diem quindenæ, vel unius anni & unius diei. Breve ad videndum infirmum.

Rex vicecomiti ſalutem. mitte quatuor legales milites de Comitatu tuo uſque N. *ad* J. *qui languidus eſt ad videndum utrum infirmitas qua ſe eſſoniavit de malo lecti verſus* B. *de placito terræ quod eſt inter eos in Comitatu tuo, ſit languor necne. Et ſi ſit languor tunc ponant ei diem a die viſus ſui in unum annum & unum diem apud Turrim London præfato* B. *inde reſponſurus, vel ſufficientem per ſe mittat reſponſalem. Et ſi non ſit languor tunc ponant ei diem a die viſus ſui in* XV. *dies quod tunc ſit ad proximum Comitatum tali præfato* B. *inde reſponſurum vel ſufficientem, &c. Et dic quatuor militibus illis quod tunc ſint ibi ad teſtificandum viſum illum & quem diem ei poſuerunt, & habeas ibi nomina militum & hoc breve.*

Ante viſum terræ petitum & factum, poteſt tenens eſſoniari de *malo lecti*, & poſt viſum ſimiliter, precedenti ſemper eſſonio de *malo veniendi*. Sed tantum unus languor capi poteſt ante viſum vel poſt, pro voluntate tenentis, & (26) non plus, quamvis eſſonium de *malo lecti* in *Majori Curia* domini Regis, utpote ad *Bancum* vel in *Itinere Juſtitiariorum*, jaci debeat tertio die ante diem placiti prefixum & per duos eſſoniatores. Et hoc in præſentia Conſtabularii Caſtri, civitatis, vel Burgi ubi hujuſmodi placita tenentur, qui inde Recordum portat coram eiſdem Juſtitiariis vel coram Majore hujuſmodi civitatis ſi Caſtrum non habeatur, nec per conſequens Conſtabularius. Quia frequentèr evenit quod comitatus tenentur in ſilvis, & Campeſtribus foris, villis & (*) (27) alibi; videtur n. quod calumniatio eſſonii de *malo lecti* non projecti ante tertium diem, nec per duos teſtes locum non tenet. quia in talibus locis nulla reſidet talis perſona quæ talia recordare vel teſtificare poſſet vel deberet. Tamen ſi hujuſmodi placitum fuerit coram Juſtitiariis *de Banco* vel *Itinerantibus*, debet ex conſuetudine & jure hujuſmodi eſſonium jaci ad Caſtrum Comitatus vel Burgi coram Conſtabulario vel ad (28) Turrim Londoniæ pro Banco, vel alibi in Itinere Juſtitiariorum propter hujuſmodi reſeantiam. Idem dico de *Curia Baronis*. Non n. tenens ignorat a quo domino tenet & cui feodo eſt annexus. Per duos autem eſſoniatores ſolemnizari debet tale eſſonium, ut unus per eſſonium excuſet infirmum, & alius propter priorem excuſationem in eſſonio de *malo veniendi*, in hoc eſſonio quaſi iterato de una & eadem ægritudine, teſtimonium perhibeat. Et idem jaci debet tertio die ante diem litis, propter computationem dierum in (29) anno biſſextili, ut cum detur

(25) *Congerere*] It may be, *contrahere* was the word of the autor. Al. *congravare*.

(26) *Non plus, quamvis*] Read *non plus. Quamvis, &c.*

(*) Al. *tales ſeu las.*

(27) *Alibi videtur n.*] Whatſoever *alibi* ſhould be (ſome copies having *tales*, ſome *talas*) continue it with *videtur quod cal, &c.* the reaſon is plain.

(28) *Turrim London.*] Refer hither *Bracton, fol* 345. & 359. *a.* and 3 *Hen.* 3. *tit.* Eſſoine 186. and the reaſon of day given at the *Tower*, ſee in *Hengham, pag.* 45. [*hic infra, pag.*

(29) *Anno biſſextili*] The foure excreſcent quadrants of a day in the *Julian* yeer were and are at the end of every foure yeers ſpace, put into one day, which added to the 365. of the common yeer

detur dies languido a die viſus ſui in unum annum & unum diem per ipſum diem integrum ante tertium diem, ante diem litis poſſit ſalvari dies excreſcens in anno biſſextili, & computari in integritate anni, quo dictum eſſonium projectum fuit, Teſte *conſilio domini Henrici Regis*, ac brevi ſuo inde directo Juſtitiariis ſuis de Banco anno regni regis *Henrici* LIIII. Eſſonium autem de *ultra mare* de jure locum non tenet niſi in prima excuſatione jaceatur, & hoc intelligito niſi reus iter arripuerit verſus ultra mare prius quam ſummonitionem receperit. ſi n. reciperetur hujuſmodi eſſonium de ultra mare poſt eſſonium de *malo veniendi*, vel ſummonitionem ſaltem, frequentèr accideret quod ipſe reus malitioſe hoc faceret ad prorogandum jus petentis. Et ideò locum tenet in prima excuſatione litis. Quia ex quo implacitatus ille iter arripuerit ante ſummonitionem receptam, videtur quod non conſtabat ei dies de placito prædicto. Et quid ſi reus de *ultra mare* eſſoniatus tali die eſſonii projecti, fuerit in regno. Certè ſi petens hoc eodem die calumniet, ad aliud diem placito prefixum dummodo hoc ſufficienter probare poterit, reo adjudicabitur pro defalta. Intereſt autem Juſtitiariorum inquirere hujus rei veritatem. Vicecomes autem in ſuo comitatu ſimiliter faciat, aut probationem illius petentis recipiat *ſexta manu.* Comperto ſiquidem ipſum reum in die dicti eſſonii projecti exitiſſe in regno, reus ille amittet ſeiſinam terræ petitæ per defaltam. Eſſonium de *ſervicio D. Regis* ſemper admittitur & locum tenet ad alium diem, dummodo porrigatur breve domini Regis de warranto eſſonii prædicti. Et ſi reus non porrigat ſic, cadit illud breve in defaltam amittendi ſeiſinam terræ. Et ſi placitum fuerit de captione averiorum cadit in miſericordiam tanquam indefenſus, & petens habebit per judicium retornum averiorum. Quando dominus *Rex eſt in exercitu*, reo ſecum exiſtente, & hoc liquet in Cancellaria domini Regis, warrantum habebit, ſed ſi *rege non exiſtente in exercitu* miſerit aliquem talem in ſervicio ſuo, ſi hoc in rotulis Cancellariæ non inſeratur oportet quod *aliquis miles* compatriota ipſius ſacramento teſtificetur ipſum reum eſſe tali die in ſervicio domini Regis antequam breve *de ſervicio ſuo* concedatur. Si n. ſine rita examinatione concedetur tale breve, ordo juris creberrimè perverteretur. Nam in quocunque ſtatu eſſet lis hujuſmodi ſive poſt vel ante poſitionem in magnam aſſiſam aut duelli vadiationem, per talem warrantum poſſet jus petentis retardari & caſualitèr imperpetuum. Et ideò tali ſolemnitate fiat hujuſmodi warrantizatio. De pleriſque autem placitis poteſt *Comitatus* ferre recordum. Ut cum quis aliquem implacitaverit in *Comitatu* per breve domini Regis de *Conſuetudinibus & ſerviciis*, & ipſe reus dedicit in pleno comitatu ipſi petenti hujuſmodi ſervicia petita, & ipſum diſaduocet pro domino. Tunc dominus ille poſteritate dierum petierit per breve domini Regis *de Recto* de petendo tenementum illud de quo dedicta ſunt hujuſmodi ſervicia petita, habendum in dominico pro ſervicio ſic dedicto. Si reus ille hoc in reſponſione negaverit, ſive in eodem *Comitatu* id neget, ſive in *Majori Curia*, habet comitatus in hac cauſa ferre recordum. Et ſi *Comitatus* ſic recordatur, petens recuperabit de prædicto tenente ſeiſinam perpetuam, & ſi *Comitatus* econtrario recordetur, petens amittet clamium imperpetuum. De his portat *Comitatus* Recordum. De *poſitionibus in magnam aſſiſam*, *duelli vadiatione*, *defaltis poſt defaltam*, utpote poſt viſum terræ factum; ut in defaltis; ſi reus poſtquam ſe poſuerit in magnam aſſiſam, ad proximum comitatum non tulerit breve domini Regis *de pace* quod vocatur *prohibemus*, vel eſſoniatus fuerit ad proximum comitatum poſt hujuſmodi poſitionem &

yeer makes 366. for the Leap or biſſextile yeer; the addition was not to the end of the yeer, but the day is ſo intercalated in *Februarie*, that it falls to be join'd with the VI. Kalends of *March*, which being every fourth yeer ſo made of two daies join'd, denominated their yeer with *biſſextus*, becauſe *eo anno bis diceretur ſexto Kal. Martias.* That ordinance of the Leap yeer after ſpoken of, is dated *apud Windeſhore* 10. *die Maii anno regni noſtri* 54. by *Hen.* 3. in the old Statutes. See for this matter *Bracton*, *fol.* 344. *b.* and 359. *b.* In the *Roman* Civill law, the like account was of the intercalated day, and it, with that wherewith it was join'd, was as one day. *Ulpian in π. tit. de minoribus l.* 3. *denique* §. 3. *Proinde ſi in* biſſexto *natus eſt, ſive priore ſive poſteriore die, celſus ſcripſit nihil referre. Nam id biduum pro* uno die *habetur, & poſterior dies Kalendarum intercalatur.*

ad

ad ſecundum non deferat dictum breve, & in ſingulis placitis terræ ubi tenens amittet per defaltam. Et in *utlegariis*, & in proſecutione *appelli ſine brevi*, vel *cum brevi*, habet comitatus portare recordum in eodem *comitatu*, & in *majori curia* domini Regis. Tamen ſi reus fecerit defaltam in eodem comitatu poſt viſum terræ factum, & ad calumniam ipſius petentis ſummonitus eſſet ille reus ad audiendum judicium ſuum, & deferat ſuum *pone* ad amovendam loquelam illinc coram *Juſtitiariis de Banco*, quod per aſſignationem cauſarum ſuperiùs expreſſarum facere poſſit ex gratia ſpeciali, generaliter ſunt recipienda omnia retroacta in comitatu ante poſitionem in magnam aſſiſam vel duelli vadiationem; & cum per *pone* venerit loquela ad *Bancum* in prædicta defalta poſt viſum, comitatus non portat recordum. Singula *placita ſine brevi* deducta in *Comitatum*, extra comitatum carent Recordo ipſius comitatus. Et omnia placita deducta in Comitatum *per breve* transferri poſſunt per breve coram Juſtitiariis de *Banco*, vel *Itinere*, & non econverſo. Quia in ipſomet *Pone* ſemper ſic dicitur; *Pone ad petitionem petentis loquelam quæ eſt in Comitatu tuo per breve noſtrum de recto, &c.* Tunc igitur ſequitur ex verbo illo [*per breve noſtrum*] quod ſi petens non agat per breve, quod nulla eſt ibi loquela. Hoc autem dico ad adnullandum opinionem Ruſticorum ruralium qui frequentèr ex impetuoſo garritu, ut appareant quod non ſint, ſuſtinent econverſò. Sin autem placitum fuerit in Comitatu *ſine brevi* vel *cum brevi*, *executiones* Judiciorum habitorum in comitatu fient & fieri debent per Ballivos domini Regis ejuſdem comitatus. Quemadmodum ſive per narrationem narratam, ſive per defaltam poſt defaltam, adjudicetur ipſi petenti ſeiſina de petitis, ex præcepto vicecomitis ponat dictus Ballivus petentem in hujuſmodi ſeiſinam, nec oportet ipſum petentem quærere aliud breve ad hoc faciendum. Quia vicecomes ex judicio comitatus in hoc caſu naturam & tenorem tam *parvi Cape* quam *magni* ex officio ſibi commiſſo habet ſine brevi. Ideo Judicia ſiquidem comitatus pronunciari debent per aliquem *Sectatorem* ipſius comitatus. Et cum aliquotiens evenit, quod quis queratur domino Regi de *falſo judicio* reddito in *ipſo comitatu*, non intelligatur, ſi comperiatur ipſum *judicium falſum* eſſe, quod *vicecomes* inde puniri debet, immò comitatus, id eſt *communitas comitatus*, unde expedit hujuſmodi *ſectatoribus* tale reſpondere quale pro juſto poterint advocare. Si autem vicecomes poſſit reddere hujuſmodi judicium, quandoque pretextu lucri, vel cauſa ignorantiæ deviaret, quod ſi ſic faceret, indebitum eſſet & iniquum (*) proſequentibus hujuſmodi cauſam impingere. Et alia ſubeſt cauſa. Sunt n. nonnulli *vicecomites* adeo ſimplices quod non habeant unde reſpondere poſſint de miſericordia aſſignata quando convincentur de tali judicio in curia. Et ideò ſtatuitur quod *totus comitatus* reddat judicium. Caveant nunc de injuſtè procedere. Semper intelligendnm eſt quod quælibet *ſummonitio* fieri debet per *bonos ſummonitores*. Videamus ergo quid & quale ſit officium ſummonitorum.

CAP. V.

De officio ſummonitorum. *Lex vadiata. Eſſonia.*

CUM ordo placitandi in *Curia Baronis* & *Comitatu* per breve domini Regis de recto ſuperius in parte exprimatur, nunc cum hujuſmodi loquela in pleno comitatu per breve quod vocatur *Pone* adjornata fuerit in Bancum, opus eſt docere quomodo ipſi petens & tenens de cætero debent procedere. Curſorium eſt autem, quod quandocunque petens fecerit defaltam, tenens eat quietus ſine die. Et tam petens quam plegii ſui de proſequendo in miſericordia. Et ideò de tenente & ejus defenſionibus lo-

(*) Al. *ſectatoribus*.

quamur. Primò deplacito attermin'ato ad *Bancum* foris *Comitatum* per *Pone*. In primo die poteſt petens eſſoniari de malo veniendi ab initio & gaudere eodem eſſonio, ſed non decet propriam commoditatem differre. Duo boni *ſummonitores* adibunt tenentem dicendo ſic. *Nos* A. & B. *ſummonemus te quod ſis tali die apud* London; *coram Juſtitiariis de* Banco *reſponſurus* tali *de* tanto *terræ cum pertinentiis in* N. & ſpecificare debent quantitatem. In judicando autem *eſſonio* ſemper reſpicienda ſunt brevia originalia & ſtatus placitorum, ne fortè per iterationem eſſonii nimis differatur petitio petentis ſeu per machinoſam cautelam proſequentis aliquid hujuſmodi eſſonium. ſed ſi tale *eſſonium* irritum fuerit convertatur in *defaltam*. Et ideo Juſtitiarii ſic faciunt ad evitandum periculum & errorem. Et ſi *ſummonitores* non faciunt officium ſuum ut prædictum eſt, tunc non conceditur ſecundum legem terræ. Et hoc idem dico, quod ſi ſummonitio non ſit ſecundum legem terræ poſt terram captam in manum domini Regis, replegiare eam poteſt reus & omninò diſadvocando omnia eſſonia cujuſcunque generis vel naturæ fuerint & defendere ſummonitionem ſic. **Sire defaute ne poye ieo fere. Car ie ne ſu pas ſomons ſeloun ley de terre & ceo ſuy preſt afere quant ke ceſt Court agard que fere deveroye.** Et tunc debent *ſummonitores*, ſi ſint boni, eſſe præſentes ad teſtificandum ſummonitionem ſuam. Et niſi ſe repreſentent ad teſtificandum ſummonitionem, licet illam decentèr fecerint non ſunt *boni ſummonitores*. Et tunc adjudicabitur reus ad legem ſuam XII. manu quam facere poteſt ſecure, ſi non ſit ſummonitus ſecundum legem terræ. Et hæc eſt cautela neceſſaria. Et ſi *ſummonitores* ſint *boni*, adhuc dico poteſt reus eſſe ad *legem* contra eos, licet falſo. Et ſummonitores non portant recordum in hoc cauſa ad deſtruendum *legem* Rei. Iſta autem ultima lex poteſt vadiari ad ſalvandum *autumnalia* aut *Redditum aſſiſum*. Et poteſt reus retrahere ſe de lege & eſſe in miſericordia, & autumnalia lucrari. In omnibus autem curiis & ſingulis placitis poteſt fieri hæc cautela. Qui rite ſummonent & eandem ſummonitionem teſtantur, vocantur *boni ſummonitores* per legem terræ & non aliter. Licet vero præſentia tenentis ex conſuetudine regni debet in curia domini Regis uſque ad *quartum diem* expectari, infra quam tenens non adjudicabitur pro defalta, caveat tamen tenens quod eſſonium ſuum *primo die* jaceatur, aut calumniari poteſt & in defaltam reduci. Attamen *ſecundo die* poſſunt aliquando eſſonia intrari in rotulo; quanquam ex gratia Juſtitiariorum quandoque propter nimietatem eſſoniorum primo die non poſſunt intrari.

CAP. VI.

Modus eſſoniandi *& reddendi eſſonia &* dies communes *in brevi* de Recto. *Eſſoniatores. Atturnati.*

MOdus eſſoniandi talis eſt. *Talis verſus talem de placito terræ per talem*; & ſic irrotulabitur. Modus (30) reddendi eſſoniorum talis eſt. Dicat Prænotarius clamatori. *Exige eſſoniatorem Richardi le Jay*; reſpondeat eſſoniator. *Ecce Adſum.* Iterum Prænotarius *ubi eſt W. Huſſe*, ac ſi diceret, *petens*, qui ſimiliter dicat *ecce adſum. Tu eſſoniator Richardi affida habendi hic warrantum tuum a die ſancti Michaelis in* XV. *dies, & tu Willielme ſerva eundem diem.* (31) Affidatis in *manibus* vel ſuper *virgam clamatoris* recedant utrique ſi velint. Poteſt autem tenens eſſoniatus, ante redditionem eſſonii, apparere ſi voluerit, & reſpondere petenti ſi voluerit. Et ſi ipſe tenens in-

(30) *Reddendi eſſon.*] More largely of that in *Bracton*, *fol.* 351. & 352.

(31) *Affidatis in manibus*] Read *Affidati*. The Affidavits here are taken *in manibus vel ſuper virgam clamatoris*. For that *in manibus* ſee *Bracton* ſpeaking of falſifying the Lord's court, *fol.* 329. *b. Vadiata probatione defaltæ in manum ſervientis domini Regis.*

ventus fuerit juxta (*) plebiſcitum, antequam reddatur eſſonium ad calumniam petentis, coercetur reſpondere petenti, velit nolit, de capitali placito. Et ſic per propriam fatuitatem poſſet in prima tali apparitione amittere dilationes ſtatutas. Sunt etiam *dies communes* dati, ex conſuetudine regni, in omnibus placitis ſecundum diverſitatem naturarum brevium. In hoc autem brevi *de recto* generaliter dentur (32) duo dies per annum tantum. Et ratio quare in iſto brevi aſſignatur pauciores dies per annum quam in aliis brevibus; quia de quovis potes diſſilire ad iſtud, & non econverſo. Iſtud n. ſtirps eſt aliis, ita quod quicquid per ipſum ritâ determinatione concluditur ſtat imperpetuum. Et ideo per hanc moderatam dilationem parcitur tenenti. Curia namque domini Regis neminem vult decipere. De *diebus omnibus* in hoc brevi ſic diſtinguo; ſi breve primo venerit ad feſtum Sancti Michaelis de Octabis & Quindena Sancti Michaelis adjornetur a die Paſchæ in XV. dies. De tertia ſeptimana, in III. ſeptimanas Paſchæ, De menſe in menſem & quinta ſeptimana in quintam ſeptimanam. De in Craſtino Animarum in Craſtinum Aſcenſionis domini. De craſtino Sancti Martini in craſtinum Sanctæ Trinitatis, de quindena Sancti Martini in quindenam Sanctæ Trinitatis, ultra quod quindenam Sancti Martini in hoc termino non recipietur breve. Et ſi breve venerit ad terminum Sancti Hillarii hoc ordine reſpondeat ei terminus Sancti Johannis Baptiſtæ & econverſo. Paſcha n. Sanctus Michael, Johannes & Hillarius in hac regula convertibilitèr ſe habent in omnibus brevibus & placitis. *Eſſoniator* autem, abſente vel præſente adverſario ſuo, tantum poteſt facere quantum *Attornatus* omni die, niſi eo die quo oportuerit partes litigare. Litigare autem pro domino ſuo non poteſt *eſſoniator*. Sed ſi petens eſſoniatus fuerit (33) vel compareat *eſſoniator* tenentis, benè poteſt capere diem verſus eum adeò bene ſicut dominus ſuus vel ejus *atturnatus*, vel ſi petens fecerit defaltam idem eſſoniator in redditione eſſonii poteſt calumniare defaltam, & ſic per calumniam ſuam petens perdet breve ſuum, & *plegii* ſui in miſericordia, & tenens & *eſſoniatores* quieti ſine die. Et ſi reus deficiat in redditione eſſonii petentis, revera eſſoniator ille poteſt ſequi defaltam verſus eum & habere breve de judicio ad capiendam terram in manum domini Regis per *magnum Cape* aut per *Parvum* de *habenda ſeiſina* vel de *attachiando* ſeu *diſtringendo* ſecundum qualitatem & diverſitatem brevium & dierum, adeò bene ſicut poteſt *dominus ſuus* vel ejus *attornatus*. Aliter autem poſſet talis defalta tranſcurrere impunita frequentèr ad damnum cujuſpiam & in illuſionem regiæ dignitatis. Quando autem *eſſoniator* ſequitur defaltam pro *domino ſuo* vel pro *ſuo atturnato*, certum nomen ejus irrotulabitur in Rotulatione defaltæ illius, propter (†) tenerem ſtatum ipſius eſſoniatoris qui in hoc caſu tam ſolemnis efficitur in poteſtate. Quando autem *atturnatus* ſequitur defaltam pro domino ſuo, non ſic fit; niſi dubitetur de fraude atturnati.

(*) Lege *placitum*.

(32) *Duo dies per annum*] But ſee Stat. of *Dies Communes in Banco*, and 8 *Ed.* 4. *fol.* 4. *b.* where that is affirm'd for a good ſtatute law.

(33) *Vel compareat*] Read *& comp.*

(†) *Ita codices queis utimur.*

CAP. VII.

De Attornatis *faciendis*.

POST igitur eſſonium redditum, poteſt reus apparere in Curia & facere *atturnatos*. Securum eſt n. ei facere *duos atturnatos* pro periculo infirmitatis, ſeu mortis, vel etiam fraudis in quocunque ſtatu eſſet lis illa. Ambo reus & petens poſſunt facere *atturnatos* & debent fieri per hæc verba. *Talis ponit loco ſuo* talem *verſus* talem *de placito terræ*. Et ſi prius fecerit attornatos quos amovere voluerit, ſic. *Et amovet tales quos prius &c.* Poſſunt autem per breve domini Regis de Cancellaria tam pro reo quam pro petente admitti *Attornati*. Et ſi reus aut petens infirmentur in provincia, & non poſſunt venire ad curiam coram Juſticiariis, nec ad Cancellariam domini Regis ad faciendos attornatos, cum oporteat de neceſſitate facientem attornatos perſonaliter in Curia præſentem eſſe, tunc ad procurationem volentis facere attornatos, mittat Cancellarius aliquem notum clericum de Cancellaria ad infirmum coram quo faciat *attornatos*. Et Cancellarius quando eos recepit, mandabit Juſtitiariis per *breve* domini Regis *de hujuſmodi attornati receptione*. Et quando dominus Rex ex gratia ſua dat alicui poteſtatem recipiendi hujuſmodi attornatos tunc ſic. *Rex dilecto & fideli ſuo* tali *ſalutem. Sciatis quod dedimus vobis poteſtatem recipiendi attornatos tales, quos loco ſuo atturnare voluerit, ad lucrandum vel perdendum in loquela quæ eſt coram Juſtitiariis noſtris apud Weſtmonaſterium per breve noſtrum, inter præfatum* talem *petentem* & talem *tenentem de* tanto *terræ cum pertinentiis in* N. *Et ideo vobis mandamus quod, cum Attornatos illos receperitis, de nominibus eorundem attornatorum conſtare faciatis remittentes nobis hoc breve, &c.* Si autem petens ſive reus languidus fuerit, poteſt habere breve domini Regis de attornato faciendo ſic. *Rex vicecomiti ſalutem. Mitte quatuor legales milites de comitatu tuo uſque* N. *ad* F. *qui languidus eſt ad videndum quem Idem* F. *loco ſuo attornare voluerit ad lucrandum vel perdendum in loquela quæ eſt in comitatu tuo coram Juſtitiariis noſtris Itinerantibus de* tanto *terræ cum pertinentiis in* N. *& dic quatuor militibus illis quod ſint coram Juſtitiariis noſtris* tali *die ad teſtificandum quem idem* F. *in præfata loquela loco ſuo attornare voluerit, &c.* Juſtitiarii ſimiliter in provincia poſſunt recipere atturnatum & hoc ſignificare ſociis ſuis per breve ſuum, & ſtabit atturnatus. Reus autem in nullo placito quod determinari poterit per legem, non poteſt facere atturnatum propter impriſonamentum quod ſubſequitur. quia non debet quis impriſonari pro (34) delicto alterius. Ex quo illud eſt perſonale delictum, nec per conſequens facere debet pro eo

(34) *Delicto alterius. Ex &c.*] Read *delicto alterius, ex &c.* What he means by this, appears not cleer enough. Of Pleas determinable *per legem* now, none is whereupon impriſonment ſhould follow. In older times indeed *Ley gager* (if you take *legem* here for that) was a triall in many actions which now admit it not; as in *attachment* upon a *prohibition* 24 *Ed.* 3. *fol.* 39. *a.* and ſee 28 *Ed.* 3. *fol.* 100. *a.* 18 *Ed.* 3. *fol.* 4. *a.* 2 *Ed.* 3. *fol.* 8. *b.* 48 *Ed.* 3. *fol.* 6. *a.* and in *Placit. Aſſiſ. apud Northampt.* 31 *Hen.* 3. *Coram Rogero de Thurkelby & ſociis ſuis. Rot.* 11. *in dorſo. Gervaſe de Bernake* brings a writ of *Meſne* againſt *Peeter de Bernake*, and the tenant confeſſes cauſe of acquitall, but ſaies the demandant was not diſtrain'd through his default, which plea is tried by his law. And in a roll in the *Tower* indorſed *Circa* 34 *Hen.* 3. *Rot.* 7. in a writ *de Fine facto* by *Matthew de Stratton* againſt *Ralf Mautanner* about a common, in the count the defendant was charged with uſing the common otherwiſe then the fine would; he pleads he did not uſe it otherwiſe, *Et offert ſe defendere contra ipſum & ſectam ſuam ſicut curia conſideraverit. Ideo conſideratum eſt quod vadiet ei* legem ſe XII. manu, *& veniat cum lege ſua à die ſancti Hillarii in* XV. *dies & plegii de lege* Willielmus Branthe, & Willielmus filius Roberti. *Poſtea à die Paſchæ in* III. *ſeptimanas venit prædictus* Radulphus *& fecit legem ſuam; ideo Conſideratum eſt quod prædictus* Radulphus *inde ſine die &* Matthæus *in miſericordia.* Thus different were ancient times from the preſent. But what had this *Ley gager* to do with impriſonment ſpoken of in this autor? *Quære.* Or doth he mean by *legem*, the arrainment on criminal offences, which being not capitall are puniſht by impriſonment? *Poni ad legem* is a uſuall phraſe in old rolls, eſpecially in that of 31 *Hen.* 3. now cited, for *one to be arrain'd*, or *put to anſwer to criminall offences.*

legem,

legem, nec cum reus fecerit atturnatum, oportebit petentem ſe eſſoniare verſus illum Atturnatum, immò verſus principalem, Attornatus autem ſi fuerit eſſoniandus, ſemper nomine ſuo eſſonietur & non in nomine principalis.

CAP. VIII.

Secundus dies *placiti.* Defaltæ. Magnum cape. Parvum cape. Non Plevine. *Legis vadiatio.*

SEcundo die placiti poteſt reus facere defaltam ſi velit ex conſuetudine regni, dum tamen eſſoniatus fuerit primo die ordine præmonſtrato. Petens autem expectans quartum diem ipſo die offerat ſe liti ſic verſus ipſum reum in hæc verba. **Richardus le Jay ſe pleint vers William Huſe de play de terre, & ils ent jour par ſon eſſoneur. jekes oze, & ceo eſt huy le quart jour, dont nous demandons judgment de ſa defaute.** cujus præſentatio ſic irrotulabitur. Richardus le Jay *op. ſe* IIII. *die verſus* Willielmum Huſſe *per atturnatum ſuum de placito terræ cum pertinentiis in* H. *quam clamat jus ſuum verſus eum*, & *ipſe non venit & habuit diem per eſſonium ſuum hic ad hunc diem.* Judicium. *prædicta terra capiatur in manum domini regis, & diem captionis ſcire faciat Juſtitiariis noſtris per literas ſuas ſigillatas vicecomes &c. Et ipſe ſummoneatur quod ſit hic* tali *die coram Juſtitiariis noſtris.* Et tunc exibit iſtud breve quod vocatur magnum cape. [*Rex vicecomiti ſalutem. Cape in manum noſtram per viſum legalium hominum de comitatu tuo unam Carucatam terræ cum pertinentiis in* H. *quam* Richardus ley Jay, *in curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium clamat ut jus ſuum verſus* Willielmum Huſſe, *pro defectu ipſius* W. *& diem captionis ſcire facias Juſtitiariis noſtris apud Weſtmonaſterium* tali *die* (*) *& habeas ibi nomina eorum per quorum viſum hoc feceris &c.* Quotquot fuerint deforciatores in brevi nominati, toties repetatur *le Cape* ſingillatim ſuper unumquenque deforciatorem. & tunc irrotulabitur proffrum ſuum ſic. *& verſus Willielmum de tanto terræ &c.* Et ſic de ſingulis. Duo verba in hoc *cape* notabilia ſint, *reſponſurus* & *oſtenſurus. Reſponſurus* refert ad capitale placitum, *Oſtenſurus* ad defaltam ſanandam. cui? ſcilicet domino Regi. Quia ex hoc defalta ſi terra debite replegiatur, nemo lucratur, niſi dominus Rex. Et ideo ſic dicitur *quare non ſervaverit &c.* Si autem reus primo die fecerit defaltam, tunc in hoc brevi de capiendo terram in manum domini Regis (†) omittatur hoc verbum *oſtenſurus* quia illo die nullo modo comparuit nec per conſequens habuit alium diem ſed *oſtenſurus quare non fuit coram Juſtitiariis noſtris ſicut ſommonitus fuit.* Iſtud *cape* vocatur *magnum cape* ad differentiam alterius brevis de judicio de placito terræ quod incipit per *Cape*, non pro eo quod ſcilicet major eſt in ſubſequentia vel effectu, ſed quod plures articuli continentur in eo quam in ſubſequenti brevi quod dicitur *parvum Cape.* verbi Gratia.] In ſimplici defalta ab initio poſt ſummonitionem & eſſonium adjornatum ſi quis reus defecerit, ut prædictum eſt, capietur terra in manum D. Regis per *magnum cape.* Sed reo deficiente poſtquam comparaverit in Curia, capietur terra in manum domini Regis per *parvum cape* pro defectu rei qui ſummonebatur ad audiendum judicium ſuum & ex hoc petens conſe-

(*) Inſeras oportet hic, *Et ſummoneas dictum Willielmum quod ſit &c. inde reſponſurus &c. oſtenſurus quare non ſervaverit diem ſibi datum per eſſoniatores ſuos &c.* nec tamen in Codd. MSS. queis utimur alitèr legitur hoc breve quam in contextu deſcripſimus. quæ ſequuntur ſatis docent ita locum hunc eſſe ſupplendum ſive *Henghami* verba ſint ſive inſititia.

(†) Legerem [*ommittantur hæc verba oſtenſurus quare non ſervaverit diem ſibi datum per eſſoniatores ſuos &c. quia illo die*] & quæ ſequuntur. Verum quæ ſignis [ ] hiſce includuntur non ſatis integra ſunt, nec in omnibus codicibus *Radulphum* agnoſcunt autorem. Sed relegatur lector ſive ab autore ipſo ſive ab exſcriptoribus nullis ad ſummam quæ dicitur **Fait aſſaboir** & omninò pro annuò brevi de *Magno cape* & quæ ſunt id genus cætero uti diximus hic ſignata.

quetur ſeiſinam de terra petita. Caveat rurſus ſibi reus deficiens quod infra XV. dies terram ſuam captam in manum domini Regis *replegiet*, quod ſi non fecerit, ad calumniam petentis proximo die placiti amittet ſeiſinam terræ, ſicut per defaltam poſt defaltam. & per *magnum cape* returnatum fiet hujuſmodi probatio ſcilicet fiat collatio de die captionis indorſato a retro brevis illius returnati a vicecomite, & de replegiatione. Si diſtricto compoto comperitur terram non eſſe replegiatam infra XV. dies poſt captionem, amittet ſeiſinam per defaltam. Et de hoc ſervit hoc verbum. *Et diem captionis &c.* Et iſta defalta vocatur gallicè (35) **Non plevine**, & æquipollet naturaliter *defaltæ poſt defaltam.* In quibus utriſque defaltis, & defalta poſt primam ſummonitionem, defalta poſt viſum, defalta poſt vadiationem duelli, defalta poſt poſitionem in magnam aſſiſam, defalta poſt warrantum vocatum, & defalta ſi non miſerit certum reſponſalem poſt conſummationem languoris, ſemper reus amittet ſeiſinam. Terra ſiquidem capta in manum domini Regis per viſum, non poteſt replegiari niſi coram Juſtitiariis vel in Cancellaria & hoc mandabit dominus Rex Juſtitiariis per breve ſuum. tamen ubicunque inventus fuerit aliquis de tali officio privilegiatus, ſive fuerit hic coram quo dependeat placitum ſive alius coram quo terra ſic capta replegiabitur, ille mandabit ſociis ſuis diem *replegiationis.* Sed non oportet eum in propria perſona terram ſuam *replegiare.* Quilibet n. extraneus pro noto, & econtra terram alterius poteſt *replegiare.* Sciendum eſt autem quod *vicecomes* nequitiam in officio ſibi commiſſam poteſt facere multipliciter. verbi gratia ſi reo non ſummonito teſtetur & indorſet *vicecomes* in brevi remiſſo ipſum eſſe ſummonitum, unde *magnum cape* exiuit. & ſi iterum in *magno cape* teſtetur captionem terræ quæ non capiebatur, & diem captionis prætextu cujuſdam fraudis, unde dicta terra non fuit replegiata, eo quod reus inde nihil ſcivit, & petens præciſe ſe capit ad defaltam *non plevinæ.* Et quid ſi teſtetur ultimam ſummonitionem quæ eſt in *le cape*, reo non ſummonito, & petens per defaltam recuperet ſeiſinam, cum de jure nullam potuit facere defaltam ex quo ſummonitus non fuit? ſciendum eſt quod poſt defaltam irritare poteſt per dedicere primam ſummonitionem per *legem* ſe XII. manu. Capito tamen, ut ſanetur defalta *non plevinæ*, per *legem* dedici non poteſt. Nam ſi reus vellet dedicere captionem oportet prius evincere fraudem captorum dictæ terræ per viſores dictæ captionis. & hoc ad impediendam ultimam ſummonitionem contentam in *le cape* per quod reus recuperavit ſeiſinam dictæ terræ petitæ, non poteſt dedici *per legem.* Quia teſtificatum fuit die quo petens recuperavit ſeiſinam terræ petitæ cum reus non fuerit ibidem, & licet affuiſſet non expediret ei dedicere ſummonitionem, cum non poſſet reſpondere de capitali placito nec poſſet vadiare *legem* de non ſummonitione contra ſummonitores qui tunc non fuerunt ibi & ſic recuperata ſeiſina petentis reus non haberet partem adverſam cui reſpondere deberet nec diem placiti unde poſſet aliquid dicere vel *legem vadiare.* Hic nullum habetur remedium niſi dare domino Regi de ſuo pro ſic, quod faceret venire ſummonitores ad attingendum hujuſmodi falſitatem, & ita poſſet recuperare dictam terram ſuam. Et licet ſummonitores teſtantur adverſus ipſum reum, (36) ſecundum *Henricum de Bathonia*, reus poteſt tunc dedicere *per legem* ſe XII. manu contra ſummonitores de non ſummonitione quam teſtantur ſe feciſſe & eorum teſtimonium infirmare, & licet reus perdat per defaltam *non plevinæ* vel per defaltam poſt defaltam, habet tamen recuperare pro hoc per breve *de recto.* Eſſonia ſiquidem de *ultra mare* de *ſervitio domini Regis* & *malo veniendi*, ſi terra capiatur in manum domini Regis * quod debita hora replegietur, poſſunt infirmari, per dedicere primam ſummonitionem, & ſic de novo reincipiendum eſt. Et ſi terra capiatur in manum domini Regis & debitè replegiatur, tunc poteſt in apparentia rei petens eſſoniari.

(35) **Non plevine**] This is remedied by the Stat. of 9 *Ed.* 3. *cap.* 4.

(36) Secundum *Henricum de Bathonia*] A Juſtice of *Henry* 3. his time is obvious in the rolls, of that name. But this point of *Ley gager* againſt the teſtimony of the ſummoners is in *Henry de Bracton, fol.* 334. *b.* He cites him again *pag.* 38. 47. & 60. [hic infra 18, 20.

CAP. IX.

Placiti Tertius *dies.* Eſſonii *calumniatio.* **Fourcher. Plevine. Recovery ſur default.** *Breve de* **Scias.** Parvum & magnum cape. Eſſoniorum *formulæ. De malo lecti. Languor.* quatuor milites *miſſi ad infirmum.* **Defalt puis eſſoin de mal de lit, & auters defaults.** *Viſores.* **View de terre.**

TErtio die apparente petente, ſi reus eſſonietur proculdubio eſſonium illud diſallocabile eſt. quia non poteſt reus eſſonium gaudere, donec prima ſanetur defalta poſtquam terra ſua capta fuit. Et ſi ſit eſſoniatus perdit ſeiſinam terræ ut per defaltam poſt defaltam. Facto autem atturnato rei ſequenti die placiti, ambo atturnatus petentis & reus *eſſoniabuntur*, atturnatus autem rei nequaquam. Si reus eſſonietur & atturnatus ſuus non vel tunc petens ad alium diem poteſt calumniare eſſonium illius rei, vel non. Certè ſecundum *Henricum de Bathonia*, non. Hora enim hoc faciendi jam præteriit. Petens autem ſeu attornatus ſuus vel ejus eſſoniator in redditione eſſonii illius potuit hoc feciſſe & allocaretur de jure. Hic autem probatur de jure quod quandoque aufertur quod differtur. licet tamen generalitèr dicatur, quod differtur non aufertur. Calumnia enim eſſonii projecti die præambulo hodie (*) devoluta in os petentis, quia expedit debitum tempus calumniandi, hodie locum non tenet. Hic autem diſputari poteſt quod *eſſoniator* in caſu plus facere poteſt quam *atturnatus.* Si autem *vir* & *mulier* inveniantur in uno brevi, quemadmodum ſi terra petita fuerit hæreditas ipſius mulieris vel data cum ea in liberum maritagium, ſeu eſt queſtus illorum viri & mulieris conjunctim, alter eorum primo die poteſt eſſoniari, & alter deficere. Congruit tamen viro primò eſſoniari in hoc caſu. Quid erit tunc de defalta mulieris? Terra capietur in manum domini regis aut deerit ordo juris. Et quid ſi replegietur hora debita? Et hoc comperiatur per indorſamentum brevis vicecomitis? Die dato eſſonio ipſius viri amitteturne terra petita per defaltam ipſius mulieris? Cum habeat virum ſine quo de jure conjunctim non debet reſpondere, certè licet vir præcellat mulierem generaliter, & in ore ſuo ſtet verbum mulieris, ſi terra petita fuerit de hæreditate ipſius mulieris, videatur quod debeat amitti. Sed ſi fuerit talis terræ queſtus viri & mulieris conjunctim, vel ſi donetur cum ea in liberum maritgium, ubi vir tantum habeat in terra illa quantum mulier aut plus, non amittatur tunc per defaltam illam. Non enim convenit quod quis pro alterius contumacia puniatur. Quid erit tunc de defalta ipſius mulieris? Reſummoneatur una cum viro ſuo quod tunc ſit ad alium diem. quia hic ordo de viro primitus eſſoniato (*1) in mulierem primitus eſſoniatam converti non poteſt. Caveant vir & mulier conjunctim implacitati quod ſemper in eſſonio alterius alter compareat quandiu *furcare* poſſint, &, cum ultra non poſſint, concurrant eorum eſſonia in ſuis locis. Alter autem illorum tantum unum eſſonium *de malo lecti* habere poteſt. Hæc autem omnia dico de pluribus *participibus* ubi terra impertita eſt ſeu tenementum videlicet de *furcatione* eſſonii & de defaltis inde provenientibus; numerantur in parte in (*2) Statutis domini *Henrici* Regis. Si autem plures participes fuerint in brevi, currat ordo communis. (*3) Et cum iſte erant dilationes tempore quo iſta ſumma erat

(*) Al. *locum non tenet in ore pet.*
(*1) *Locus pleriſq; exempll. corruptus.*
(*2) *Marlbrige, cap.* 14.
(*3) *Deſunt quæ his ſignis* * * *hinc diſtincta ſunt, pleriſq; exempll.*

 compoſita

compoſita ubi plures erant participes tenentes per quos juſta petitio ultra quam debuit prorogabatur, illuſtris rex *Edwardus* filius R. *Henrici* in primo parlamento ſuo decrevit in præmiſſis ſicut plenius patebit in (*4) ſexageſimo articulo conſtitutionum illarum. Eſſonium autem de *ultra mare* ſi ritè jaceatur ſemper expoſcit inducias XL. dierum ad minus. Et ſemper debet præcedere eſſonium de malo veniendi & non econtra. Tertio die placiti poſt captionem terræ per defaltam quam tenens fecit die præcurſo, aut tunc ipſe tenens defuit aut apparet. Sive autem appareat ſive non ad profrum petentis inſpiciat prænotarius indorſamentum vicecomitis a retro brevis per quod terra capiebatur. Et ſi reperiatur non eſſe replegiatam infra XV. dies poſt captionem tunc petens offerat ſe liti ſic **Richard le Jay ſe proffre vers William Huſe de play de terre. A tiel jour fu la terre priſe in la main le rey par ſa defaut de non plevine de tout outre.** Ita offerre ſe debet, ſi tenens fuerit præſens; & ſi ſe teneat ad defaltam quod ſecurè facere poteſt, hoc modo irrotulabitur profrum ſuum. *Richardus le Jay* aut *per ſe*, aut *per attornatum optulit ſe* IIII. *die verſus* Willielm. Huſe *de placito unius carucatæ terræ cum pertinentiis in* H. *quam clamat ut jus ſuum verſus eum. & ipſe non venit & alias fecit defaltam ita quod præceptum fuit vicecomiti quod caperet prædictam terram in manum domini Regis & quod diem &c. & ipſe ſuum &c. quod eſſet hic ad hunc diem. Et vicecomes mandavit diem captionis & quod ſummonitus fuit &c. & ideo conſideratum eſt quod prædictus* Richardus *recuperet ſeiſinam ſuam verſus eum per defaltam &* W. *in miſericordia.* Et ſi tenens fuerit præſens tale erit breve petentis de Judicio quod vocatur *Scias.* Rex *vicecomiti ſalutem. ſcias quod* Richardus le Jay *in Curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium recuperavit ſeiſinam ſuam verſus* Willielmum Huſe *de una carucata terræ cum pertinentiis in* H. *pro defectu ipſius* Willielmi. *Et ideo tibi præcipimus quod prædicto* Richardo *de prædicta carucata terræ cum pertinentiis plenariam ſeiſinam habere facias ſicut prædictum eſt &c.* Et ſi tenens defecerit poſt apparitionem, tunc exibit *parvum cape* ſic. *Rex vicecomiti ſalutem cape in manum noſtram unam carucatam terræ cum pertinentiis ſuis in* N. *quam* Richardus le Jay *in Curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium clamat ut jus ſuum verſus* Willielmum Huſe *pro defectu ipſius* Willielmi, *Et ſummoneas per bonos ſummonitores prædictum* Willielmum *quod ſit coram Juſtitiariis noſtris apud Weſtmonaſterium tali die ad audiendum Judicium ſuum.* Et habeas &c. Tunc autem ad proximum diem reo præſente petens habebit dictum breve *Scias* per quod adjudicetur ſeiſina. Et quid ſi vicecomes ad alium diem per *magnum cape* non ceperit terram in manum domini Regis ut præceptum fuit ei, nec miſerit breve ad bancum? Erit ne ipſe tenens inde perdens, aut derogabitur ne in aliquo ipſi petenti? Reſpondeo. Tenens ob hoc non eſt puniendus. Nam licet contumax extiterit vicecomes, negligentia vicecomitis non debet ei impingi. Petens autem amittet unum diem. Et cadet hæc negligentia vicecomitis in detrimentum vicecomitis ſic. *Rex vicecomiti ſalutem. Præcipimus tibi ſicut alias tibi præcipimus quod capias per viſum &c.* ut ſupra in *magno cape* & in fine ſic. *Et tu ipſe tunc ſis ibi ad audiendum judicium tuum de hoc quod prædictam terram in manum noſtram non cepiſti nec prædictum* Willielmum *ſummoniſti quod eſſet coram Juſtitiariis &c. nec breve noſtrum quod inde tibi venit, præfatis juſtitiariis noſtris ad præfatum diem non miſiſti, ſicut tibi præceptum fuit. Et habeas &c.* Terra autem poſt primam vel iteratam captionem, ut moris eſt, replegiata, tenens poteſt ſecurè eſſoniari de *malo lecti* quod quidem eſſonium ſic irrotulabitur. *Richardus le Jay verſus* Willielmum Huſe *de malo lecti de placito terræ per talem & talem*, & ſic reddi debet. *exige eſſoniatorem* Richardi le Jay. *ubi eſt* Willielmus Huſe &c. *vos eſſoniatores* Richardi le Jay *quia non conſtat utrum dominus veſter velit ſe capere ad languorem necne vobis non datur certus dies. Sed tu* Willielme *ſequere breve ad vicecomitem ad faciendum venire infirmum.* Rex *vicecomiti ſalutem. Mitte*

(*4) *Weſt.* 1. *cap.* 43.

quatuor

quatuor legales milites de comitatu tuo uſque N. *ad* F. *ad videndum utrum infirmitas qua* Willielmus Huſe *in Curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium ſe eſſoniavit de malo lecti verſus* Richardum le Jay *de placito terræ in Comitatu* Suſſex, *ſit languor necne. Et ſi ſit languor tunc ponant ei diem a die viſus ſui in unum annum & unum diem apud* Turrim London *quod tunc ſit ibi reſponſurus vel ſufficientem pro ſe mittat reſponſalem & ſi non ſit languor tunc ponant ei diem coram Juſtitiariis noſtris a die viſus ſui in* XV. *dies quod tunc ſit ibi reſponſurus vel ſufficientem pro ſe mittat reſponſalem. Et dic quatuor militibus illis quod tunc ſint coram præfatis Juſtitiariis noſtris ad præfatum diem ad teſtificandum viſum illum & quem diem ei poſuerint. Et habeas ibi nomina militum & hoc breve teſte tali Juſtitiario &c.* Ex quo autem placitum capitale eſt coram Juſtitiariis de Banco quare debent viſores ponere languido diem apud Turrim London cum non ſedeant ibi Juſtitiarii? Solutio. In hoc brevi *mitte quatuor legales milites* ſic dicitur *ſi ſit languor tunc ponant ei diem a die viſus ſui in unum annum & unum diem*, & quia milites illi non habent certum diem videre infirmum; per conſequens non poteſt conſtare quem diem præfigent languido. Ergo cum conſtare non poteſt adhuc de certo die ponendo à viſoribus quia accidentaliter poſſet iſtud eſſonium jaci in fine vel quaſi in fine alicujus termini, ſicut frequentèr, & forte infirmus deberet videri tali hora quod oporteret ei præfigere diem tempore vacationis; Et in vacationibus nullus in Banco reſidet privilegiatus quod poſſit vel debeat admittere reſponſalem languidi cum ſurrexerit; Ideo ad *Turrim London* ut dictum eſt adjornetur languidus reſpondere coram *Conſtabulario Turris London* qui ibi reſidet per totum annum qui ipſum languidum adjornabit quod reſpondeat coram Juſtitiariis de Banco proximo die placiti. Et idem *Conſtabularius* teſtificari debet coram Juſtitiariis in Banco præſente languido, vel reſponſali ſuo. Et quid ſi languidus ille, die a viſoribus præfixo ad Turrim non venerit nec reſponſalem miſerit? Hoc revera teſtificato coram Juſtitiariis in Banco ab ipſo Conſtabulario, ad profrum petentis reus ex rigore juris amittet ſeiſinam hoc modo. **Richard ley Jay ſe pꝛoffre vers** William Huſe **de play de terre.** William **ſe fiſt eſſonier de mal de lyt a teu jour per cely e cely.** Richard **ſuiſt un bꝛeif an viſcont a fere le veu de** IV. **chevaliers de counte les queux le virent e jour aſſiſerent per languoꝛ quil pꝛiſt a la** Tour de Londres **ſoloun le uſage d'Engleterre. E il ne vent pas e ceo eſt bien teſtmoigne par le Conſtable de la tour que en ceo caſe poꝛt recoꝛd e teſtmoignage, d'ont nous demandons Judgment de ſe defaute tout outre.** Et tunc petens habebit *parvum cape*, ad capiendam terram in manum domini Regis & ad ſummonendum reum ad audiendum judicium ſuum. Et ſic recuperabit petens in hoc caſu. Et licet reus comparuerit in Curia vel in Banco in hac calumnia actoris, & non ſervaverit diem ad Turrim tunc ad conſimile proffrum petens ipſe recuperabit ſeiſinam per breve *ſcias* propter præſentiam rei qui in abſentia ſua judicari non debet. Quia cum reus ita defecerit quod debeat ſeiſinam amittere ſi præſens fuerit exibit *ſcias*, ſi abſens, *parvum Cape.* Iſtud autem eſſonium de malo lecti non jacet niſi in hoc brevi patenti vel clauſo ſcilicet *præcipe in capite.* Tamen ſecundum *Henricum de Bathonia* jacet in brevi de *conſuetudinibus & ſervitiis* & poſt vadiationem duelli vel poſitionem in magnam aſſiſam & non ante. Si *ſorores tres* vel quatuor vel plures vel pauciores reæ efficiantur conjunctim, Hæ omnes gaudere poſſunt hoc eſſonio tamen una tantum pro ſingulis capiat languorem. Ex quo tunc generaliter oportet quod *duo eſſoniatores* jaceant hoc eſſonium pro unico reo, & iſtæ quatuor ſorores videntur eſſe quaſi quatuor reæ, quæro ſi ſigillatim per duos eſſoniatores debent hoc eſſonium jactari pro illis? Solutio. Jus permittet unam pro ſe & reliquis ſororibus languere ad cujus languorem ceſſabit placitum verſus ſorores complices uſque ad diem a viſoribus præfixum. Ergo cum per languorem unius, reliquæ in hoc caſu excuſari poſſunt, Quæ nam illarum debet capere languorem? Et primitus equidem viſa à militibus languebit. Et quid ſi diſgregentur? id eſt ſi inventæ

non fuerint in una villa, & prima ſecunda & tertia (37) velint ſurgere, tunc quarta ultimò viſa a militibus capiet languorem. Dico autem per languorem ultimò viſæ ceſſabit placitum ac ſi omnes concordarent. In fine autem languoris, an iſta languida ſi appareat die à viſoribus præfixo, debeat ne pro ſe & aliis reſpondere? vel reſponſalem mittere, ita quod in ore aliarum ſororum reſponſio non jacet? in hoc caſu, ſi præſens fuerit languida, dico quod oportet illas comparere. Et quicquid reſpondebit illa quæ languebat tenebitur pro conſtanti. Et ſi miſerit reſponſalem, aliæ ſorores benè poſſunt abſentare. Eſto tunc quod per culluſionem inter petentem & languidam vel reſponſalem ejus habitam, recognoſcatur jus petentis in reſpondendo ad exhæredacionem trium ſororum hujuſmodi per cujus recognitionem petens recuperet ſeiſinam. hic niſi per remedium Curiæ attingatur illa colluſio & Curiæ deceptio, ad reſtitutionem trium ſororum hujuſmodi, nullum habetur recuperare niſi per breve *de recto.* Quicquid autem dico de *ſororibus* junctis in uno brevi, dico de *viro & muliere* conjunctis & de *participibus* ubi terra impertita eſt. Die autem præfixo tenenti à viſoribus, debent viſores apparere in Curia ad teſtificandum viſum ſuum, quia ex eorum teſtimonio procedendum eſt. Videlicet ſi teſtentur ſe vidiſſe infirmum tali die, & per diſtrictum compotum liqueat tunc infirmum illum miſiſſe reſponſalem ſuum die ab eis viſoribus præfixo, de quibus viſu & reſponſali ita in Curia computandum eſt ut ſupra in capitulo de Ordine placitandi in Curia Baronis, penitus liquet quod admittendus eſt reſponſalis ejuſdem. Et ſi non venerit tenens nec reſponſalem miſerit, & hoc teſtificato à viſoribus & comperto per certum compotum quod non ſervavit diem ab eiſdem præfixum ut ſupraſcribitur, offerat ſe petens & obtinebit ſeiſinam per *parvum cape* vel per *ſcias.* Et ad proffrum petentis calumniantis defaltam rei, ſic intrabitur defalta illa. *Richardus le Jay petit verſus* Willielmum Huſe *unam carucatam terræ cum pertinentiis in* H. ut jus ſuum &c. *& alias ſe eſſoniavit de malo veniendi ſcilicet tunc, & habuit diem per eſſonium ſuum in Octabis &c. ad quem diem* W. *eſſoniavit ſe de malo lecti, ita quod præceptum fuit vicecomiti quod mitteret quatuor legales milites apud &c. ad videndum utrum infirmitas &c. eſſet languor vel non. Et ſi eſſet languor tunc ponerent ei diem a die viſus ſui in unum annum & unum diem apud* Turrim London *quod tunc eſſet ibi vel per ſe vel per ſufficientem reſponſalem &c. Et ſi non eſſet languor, tunc ponerent ei diem hic &c. vel ſufficientem &c. Et Willielmus non venit nec reſponſalem miſit. Ideo conſideratum eſt quod prædictus* Richardus *recuperet ſeiſinam ſuam verſus eum per defaltam ipſius* W. *& ipſe in miſericordia, & prædictus* Richardus *ſequatur breve ſuum ad vicecomitem.* Et quid ſi Willielmus non compareret per ſe vel per attornatum ſuum ſecundo ſaltem die ſibi dato per eſſoniatores ſuos? tunc poſt eſſonium de *malo lecti* procul dubio petens ſecurè & præciſe ſe capiet ad defaltam illam ſic dicens. *Willielmus fecit defaltam primo die placiti eo quod ſolemniter vocatus non comparuit, unde idem petens petit judicium de defalta rei præciſe.* Reus tamen replicando requirere debet a

(37) *Velint ſurgere*] i. e. have *licentiam ſurgendi*, whereof more ſpeciall matter is in *Bracton, fol.* 355. 3 *Hen.* 3. *tit.* Eſſoine 186. 14 *Hen.* 3. Eſſoin 190. & *vide Regiſt. Orig. fol.* 8. & 9. He that was eſſoin'd *de malo lecti* might not riſe before his being ſeen by the 4 Knights, which if he did, and were not found in his bed when they came to make their view, his eſſoin was turn'd into a default, of which alſo is a notable caſe of 16 *Rich.* 1. in the book of *Crowland*, where *Henry de longo Campo* Abbot, though being in poſſeſſion, yet ſued the Prior of *Spalding* for entring upon his Marſh *contra pacem Regiam*; the Prior pleads, he enter'd as into his own fee ſimple, and offers 40 Marks for the grand aſſiſe; and the miſe is join'd ſo. The Abbot is eſſoin'd *de malo lecti.* The Writ goes out to the 4 Knights to make the view; while one is comming to view him he riſes, and comes towards the court; the Knight certified he could not find him in his bed; whereupon judgment was given, after long conſideration, *quod Abbas* Crowlandiæ *qui ſe eſſoniavit contra Priorem de* Spalding *de malo lecti apud* Crowland, *& illic non eſt inventus in lecto, quando viſus deberet de eo fieri, amitteret ad tempus ſeiſinam.* Note, ſeiſin was upon his default given to the Defendant in the ſuit. The whole plea and ſtory of it is long, but moſt worthy the reading, to inſtruct in the Courts, Courſes of that time, and ſpecially in Proceſſes ſent out by the L. Chief Juſtice of *England*, in his own name, ſitting with the Juſtices in Banco. Divers whole writs from the King beyond ſea, and from the Chief Juſtice at home, are in it, and the whole is verie underſtandingly related.

petente utrum velit ſe tenere præciſe ad defaltam illam vel ad capitale placitum. Oportet quod ſi ſe teneat ad defaltam illam quod de toto renunciet capitali placito & econverſo. Nam inconſuetum eſt quod quis in Curia domini Regis duplici remedio ſive baculo in uno caſu ſimul & ſemel gaudeat ſive pugnet. Si autem petens requiſitus ſe teneat ad defaltam illam præciſe, reus poteſt ſic dicere, quod nullam fecit defaltam, quod venit ad Bancum primo die placiti, & obtulit ſe verſus prædictum petentem de placito prædicto & ibi morabatur quouſque publicò proclamatum fuit per *ſervientem de Banco* quod *omnes offerentes ſe ibidem ad placitandum de quibuſcunque placitis, exceptis placitis unde magna aſſiſa arrainiata fuit, vel duellum vadiatum, ſine occaſione recederent in craſtinum.* Et dicit quod ſi ſolemniter vocatus fuerit per *ſervientem de Banco* hoc fuit poſtquam clamatum fuit ſicut prædictum eſt. Iſta ſiquidem allegatio ſuper hac defalta penitus dependet a Recordo Juſtitiariorum. Et ſi Juſtitiarii recordarentur ipſum ſervientem ita ut dictum eſt publicè clamaſſe proffrum in Banco, *Reus eat inde ſine die & petens amittet clamium illa vice & tenens in miſericordia.* quia præciſè ſe tenuit ad defaltam. Et ſi Juſtitiarii recordarentur quod non fuit publice clamatum proffrum in Banco ſicut prædictum eſt, & quod omnibus horis primi diei placiti uſque (38) ad horam nonam prædictus reus ſolemnitèr vocatus non comparuit nec ſufficientem pro ſe miſit reſponſalem, *conſideratum eſt quod prædictus petens recuperet ſeiſinam verſus eum per defaltam, & tenens in miſericordia.* Sequatur autem petens breve ſuum. Caveat autem calumniator hujus defaltæ quod ſit certus de recordo Juſtitiariorum in hoc caſu. In defalta quoque poſt eſſonium de *malo lecti*, poſt *viſum* terræ factum, poſt poſitionem in *magnam aſſiſam* & poſt vadiationem *duelli*, reus amittet ſeiſinam per abſentiam primi diei. Si viſores illi non venerint ad teſtificandum viſum ſuum, quid erit? ſemper diſtringantur donec venerint. Primò per vadios & ſalvos plegios ſic. *Rex vicecomiti ſalutem. Pone per vadios, & ſalvos plegios* A. B. C. D. *viſores infirmitatis talis quod ſint coram Juſtitiariis noſtris &c. ad teſtificandum &c.* Quare autem debent primò attachiari cum non ſummoneantur ut videtur? quia in hoc brevi *Mitte quatuor legales milites &c.* continetur verſus finem iſtud verbum quod valet ſummoneas? *Et dic quatuor militibus illis qui viſui illi interfuerint quod ſint &c.* Et ſic licet pateat quod non ſummoneantur, ſunt quaſi ſummoniti. Et ideò primò attachiantur per plegios ratione illius verbi in brevi contenti ſcilicet & *dic.* Secundo ſi non venerint ad proſecutionem petentis, ſic. *Rex vicecomiti, ſalutem. Pone per vadios & meliores plegios* A. B. C. D. &c. Et tunc ſunt primi plegii in miſericordia. Tertio per corpora eorum; Et tunc ſunt tam primi plegii quam ſecundi in miſericordia. Quartò per terras & catalla, ita quod vicecomes habeat corpora & quod manum non apponant, & quod vicecomes reſpondeat de exitibus, & interim taceat tenens. Si autem tenens ad diem ſibi datum a viſoribus non venerit perſonalitèr ſed reſponſalem pro ſe miſerit, admittendus eſt & ejus reſponſalis audiendus quicunque fuerit reſponſalis ille, dummodò ætatem habuerit. veruntamen ſi determinativè reſpondeat, utpote ſi debeat judicium fieri & loquela terminari, ut de duello vadiato vel de magna aſſiſa ſummonita, vel aliquo alio modo unde loquela debeat terminari; Tunc debet judicium illud poni in reſpectu quouſque per milites de novo miſſos per breve domini Regis ad tenentem ſciatur ab eo ſi advocaverit reſponſalem ſuum prædictum an non. Quod ſi non fecerit revertantur illi quatuor milites & id teſtentur coram Juſtitiariis de Banco & tunc procedendum eſt eodem modo ac ſi reus perſonaliter comparuiſſet & reſpondiſſet. Et ſi negaverit reſponſalem & ejus reſponſum dedixerit, tunc erit manifeſta defalta rei, ſicut ſæpè contingit, & debet ad calumniam petentis judicari & inde petens breve *Scias* habebit. Iſta ſiquidem defalta, ſicut omnes aliæ (*) per eſſonium de ſervitio domini Regis, habito inde

(38) *Ad horam nonam*] See 16 *Ed.* 2. *tit.* Action ſur le caſe 47. where ſo much of the day as is from nine of clock is taken for half a day. *Quære.*

(*) *Locus in pleriſque* CXX. *depravatus.*

ſpeciali warranto, ſalvari poteſt. Dato ſiquidem quod reus omiſſo hoc eſſonio de *malo lecti*, in adoptione ſua erit quod appareat hodie & petat viſum terræ ſic. **Richard le Jay ſe ꝓffre per ſon attorne vers** William Huſe, **de play de terre.** Dicat *Willielmus* vel ejus (*) atturnatus **veies ci William encontre Richard. Ceo vous monſtre Richard que ci eſt &c.** Et *Willielmus* reſpondet ita. **Tort e force defend William que ci eſt & demande le oyer de bref.** Lecto autem & audito brevi ſic. **Nous emperlerons a vos congies.** In regreſſu autem ejuſdem rei ſic. **Tort & force defend William a ſon iſſir e ſi fet il uncore a ſon entrer &c.**

CAP. X.

De Exceptionibus. Viſu *petendo.*

MOdò videndum eſt de naturis *exceptionum.* Sunt quædam *dilatoriæ* & quædam *peremptoriæ.* Exceptio dilatoria caſſat breve, & non perimit jus. Peremptoria perimit jus & caſſat breve. Harum quoque exceptionum quædam ſufficiunt ante *viſum* terræ ad caſſandum breve, quædam poſt *viſum* nihil operantur. quia nulla dilatoria locum habet poſt *viſum* [(†) niſi exceptio *nontenuræ* quæ proponi debet poſt viſum] Neſcit enim reus petitionem petentis prius, & facto viſu affirmatur breve, ita quod per dilatoriam caſſari non poteſt, niſi tantum per *nontenuram.* Ideo omiſſis hic peremptoriis antequam petamus viſum, proponamus dilatorias quæ tales ſunt. *Vitium ſcripturæ, Raſuræ literæ in hoc brevi patenti,* Error *nominis pro nomine, Agnominis pro agnomine, unius villæ pro alia,* & quando breve impetratur *extra naturam ſui ipſius* & conſimiles caſſant breve ante viſum. Excuſſis autem iſtis exceptionibus, aut tenent locum aut non. Si tenent tunc ad præſens conſumitur breve. nec oportet tunc plus facere, ſi non teneant locum, niſi petere viſum. De *viſu petendo* loquimur ſic. **Tort & force defend W. que cy eſt & demand vew de la terre ove apermeſmes.** Concedetur, & irrotulabitur ſic. *Richardus le Jay petit verſus* Will. Huſe *unam carucatam terræ cum pertinentiis in* H. *ut jus ſuum, & Willielmus venit & petit inde viſum & habeat; dies datus eſt ei & fiat viſus per hoc breve. Rex vicecomiti ſalutem. Præcipimus tibi quod ſine dilatione habere facias* Willielmo Huſe *viſum de una carucata terræ cum pertinentiis in* H. *quam* Richardus le Jay *in curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium clamat ut jus ſuum verſus eum. & dicas quatuor militibus illis qui viſui illi interfuerunt quod ſint coram præfatis Juſtitiariis noſtris apud Weſtmonaſterium tali die, ad teſtificandum viſum illum & habeas ibi nomina militum &c.* Opus eſt amodò exprimere in quibus caſibus poteſt denegari *viſus* terræ & in quibus non. Videlicet quantum ad hoc breve & conſimilia conſtat quod in hoc breve & in aliis brevibus per quæ poteſt deveniri ad *duellum* vel ad *magnam aſſiſam,* viſus generalitèr jacet, ſi petatur ante duelli vadiationem, vel poſitionem in magnam aſſiſam, tamen ſi plures fuerint tenentes ſucceſſivè, per vocationem ad warrantiam, nullus habebit viſum niſi primus tenens. & quomodo poteſt tam primus tenens quam ſucceſſivus vocati viſum amittere? ſic. *A.* petit verſus *B.* unam carucatam terræ cum pertinentiis &c. ut jus ſuum, & *B.* venit & vocat inde ad warrantiam *C.* qui ſummonitus venit, & antequam warrantizat vel poſt petit viſum. Non jacet reverà. Quia cum inculpaverit *C.* ſic **A tort ly de force par ſa garantie &c.** Juris ordo vult quod reſpondeat ad cartam ſuam vel ad cartam anteceſſorum ſuorum, ſi in carta illa ſpecificatur terræ illa petita. Et licet vocator non habuerit cartam, vocatus debet bene ſcire de qua

(*) Al. *narrator, ut in nonnullis.*
(†) *Deſunt in nonnullis.*

terra

terra (39) cepit homagium & ſervitium vocantis. unde cum warrantizaverit, petens petit eandem terram quam warrantizavit, & ideo non jacet viſus. Et illud idem dicendum eſt de decem tenentibus ſi de warranto in warrantum fierent tenentes. *Campiones* tamen ſi ad duellum vel ad magnam aſſiſam pervenerint habeant viſum poſt duelli vadiationem vel poſitionem in magnam aſſiſam. Et dicetur eis quod infra diem ſibi dictam, terram illam videant (40) & hoc pro ſacramento ſuo quod facient ſecundum quod perpendi poteſt in forma ſacramenti eorundem. Et poſſunt quidam caſus accidere de campionibus in quibus denegabitur eis viſus terræ. De viſu quidem habendo in placitis *intruſionis*, *dotis*, & hujuſmodi ſuis locis tractabitur inferiùs. Generalitèr autem intellige quod ubi tenens poteſt vocare (41) ad warrantiam, poteſt habere viſum, niſi fuerit in caſibus quibuſdam ſpecialiter exceptis ut ſi mulier petat *dotem* petens non habeat viſum de tenementis unde vir obiit feiſitus, tamen poteſt vocare ad warrantiam & in brevibus *de ingreſſu* ubi fit mentio de gradibus ibi conceditur viſus. (*) veruntamen non poteſt ibi vocare ad warrantiam extra lineam ſed tantum reſpondere ad ingreſſum. & poteſt aliquando haberi viſus ubi non poteſt vocari ad warrantiam ut in brevi (42) *quod permittat*. Periculum eſt autem ante viſum vocare ad warrantiam verbi gratia. Quidam petiit verſus quendam unam carucatam terræ cum pertinentiis in *H.* & tenens ille habuit duas carucatas in eadem villa, petens verò non habuit jus nec ad unam nec ad aliam. Ipſe tenens cum non potuit eſſe certus quid ab eo peteretur, antequam viſus inde ſibi fieret, venit antequam viſum petiit & vocat inde ad warrantiam *C.* qui ſummonitus fuit, venit & petiit ſibi oſtendi per quod debeat ei warrantizare qui protulit quandam cartam per quam anteceſſores ipſius *C.* & hæredes ſui debeant warrantizare unam carucatam terræ in eadem villa & petens dicit quod non petit dictam carucatam terræ ſed aliam, & tenens cum hoc vidit voluit reſpondiſſe de capitali placito & petens petit judicium ſi, poſt warrantum vocatum, poſſit tenens reſpondere de capitali placito, & *conſideratum fuit quod non, ſed quod ille quietus de warrantia, & quod petens recuperet ſeiſinam ſuam verſus tenentem tanquam indefenſum & tenens in miſericordia.* coram *Henrico de Bathonia.*

(39) *Cepit homagium & ſervitium vocantis*] That homage and other ſervices was cauſe of warranty anciently, autorities are frequent, *Temp. Edw.* 1. *tit.* Garranty 90. 47 *Hen.* 3. *Itin. Cornub. Eod. tit.* 99. & Voucher 270. *Temp. Ed.* 1. *tit.* Age 129. 13 *Ed.* 1. *tit. Per quæ ſervicia* 23. *Breton, chap.* 70. & 68. *Bract. lib.* 4. *tract. de Mort. Anteceſſoris, cap.* 1. & *De warrant. lib.* 5. *cap.* 2. §. 4. *Stat. de Bigamis, cap.* 6. and this autor, *cap.* 13. although now only homage anceſtrell be cauſe of warranty.

(40) *Et hoc pro ſacramento ſuo*] See *Glanvil, lib.* 2. *cap.* 3. and *Weſtm.* 1. *cap.* 41.

(41) *Ad warrantiam*] The latine of that time is rather *ad warrantum*, and ſo afterward is it often printed; the copies being indifferent.

(*) *Variatim ſe habent hic codd. MSS.*

(42) *Quod permittat*] But in *Hen.* 3. his time, voucher was allow'd in a *quod permittat*, as appears 12 *Hen.* 3. *Itin. Norff.* Voucher 282. & 33 *Ed.* 1. *tit.* Voucher 272.

CAP. XI.

Quartus dies placiti. Eſſonium de ſervicio domini Regis.

QUarto die, remiſſo per vicecomitem brevi, per quod viſus terræ factus fuit, actore ſe liti offerente, prænotarius inſpiciat indorſamentum brevis vicecomitis, & ſi reperiatur per nomina militum qui viſui interfuerunt quod viſus terræ factus fuit, tunc ad proffrum petentis clamabitur reus qui die illo juſtè ſi velit eſſoniari poteſt de *malo veniendi*, quod quidem eſſonium jaci & reddi debet quemadmodum ſuperiùs eſt expreſſum. Et quid ſi habita colluſione inter tenentem & vicecomitem viſus terræ factus non fuerit nec breve remiſſum? proculdubiò ita procedendum eſt erga *vicecomitem* in hoc caſu ut ſuperiùs diſtinguitur, quando vicecomes per colluſionem omittit exequi *magnum cape*, nec ibi nec hic propter negligentiam vicecomitis reus debet puniri, nec petens promoveri. Eſto autem quod reus nullo modo venerit ad hunc diem. quid juris? petens offerat ſe liti. **Richard le Jay ſe proffre vers William Huſe de play de terre. William avoit view de terre a teu jour, e la view eſt teſtmeniage per les quatre chivalers queux a la view fuerent e el ne vient pas, d'ont nos demandomous judgment de ſa default.** Quæ defalta ſic intrabitur. *Richardus le Jay obtulit ſe quarto die verſus* Willielm. Huſe, *de placito unius carucatæ terræ cum pertinentiis in* H. *quam clamat ut jus ſuum verſus eum &* Willielmus *petit viſum terræ à die &c. & habuit diem hic poſt viſum terræ factum ad hunc diem & per quatuor milites qui viſui illi interfuerunt, teſtificatur hic nunc. & prædictus* Willielmus *non venit, & ideo conſideratum eſt quod prædicta terra capiatur in manum domini Regis & ipſe ſummoneatur quod ſit hic* tali die *ad audiendum judicium ſuum.* & tunc exibit *parvum cape* quod ſupra ſcribitur. Et ſciendum quod iſto die & aliis diebus præteritis & futuris, abſentia rei ſalvari poteſt ut prædictum eſt, dum tamen reus ille excuſetur per eſſonium de *ſervitio domini Regis*, & inde prætandat tale breve. *Rex Juſtitiariis ſuis de Banco, ſalutem. Sciatis quod* Willielmus de H. *fuit coram nobis tali die apud* N. *per præceptum noſtrum ita quod eo die intereſſe non potuit loquelæ quæ eſt coram vobis per breve noſtrum de recto inter* R. *petentem & ipſum* Willielmum *tenentem de una carucata terræ cum pertinentiis in* H. *& ideo vobis mandamus quod prædictus* Willielmus *propter abſentiam ſuam illius diei non ponatur in defaltam, nec in aliquo ſit perdens, quia diem illum quoad hoc ei warrantizamus &c.* Dato ſiquidem quod reus ſequendo hujuſmodi prædictum breve defecerit die ei dato de brevi illo poſt viſum terræ factum, gratia dilationis faciendæ, quid hoc proficeret ei? Ex quo autem ut de plano conſtat, poſſit prorogari hujuſmodi loquela de uno termino in aliam & in caſu lucrari *autumnalia* aut *redditus aſſiſus* aut utrunque & petens poſſit interim decedere, & ſic breve & proceſſus irruentur de toto, ideò, quia cauti ſunt homines, frequentèr fit talis dilatio ex lege & principis beneficio.

CAP. XII.

Quintus dies *placiti.* Capere languorem *ſemel tantum licet.*

QUinto die placiti, poſtquam reus eſſoniatus fuerit de *malo veniendi* poſt viſum terræ factum, ſi reus ille hoc die ſibi dato per eſſonium, nullo modo venerit, quid juris? Petens ſe offerat liti ſic. **Richard le Jay ſe ꝓffre vers William Huſe de play de terre. William fuſt eſſoin a ceu jour puis veu de terre fete, & avoit jour jeskes oꝛe & il ne vient pas, d'unt nus demandomous judgment de ſa defaute.** Iſta ſiquidem defalta aperta eſt per quam petens recuperavit ſeiſinam, & ſic irrotulabitur. *Richardus le Jay optulit ſe* IV. *die verſus* W. de Huſe *per talem de placito unius carucatæ terræ cum pertinentiis in* N. *quam clamat ut jus ſuum verſus eum. Et ipſe non venit, & habuit diem per eſſonium ſuum poſtquam comparuit in Curia & petiit viſum terræ.* Judicium. *prædicta terra capiatur in manum domini Regis, & ipſe ſummoneatur quod hic ſic tali die ad audiendum judicium ſuum,* & tunc exibit *parvum cape* pro petente. Ex quo autem in jure permittitur quod in placito terræ, ubi agatur de proprietate recti, ut in hoc brevi & ſuis branchiis, poſt eſſonium de *malo veniendi* generaliter ſequitur eſſonium de *malo lecti*, per hanc regulam, cum ante viſum terræ (ut ſupra in capitulo de IV. die) per idem eſſonium cæperit languorem, tamen intelligatur quod languor captus ſit commoditas & exitus eſſonii *de malo lecti* in litis prorogatione, Quid juris? Regula data, quod poſt eſſonium *de malo veniendi* generalitèr ſubſequitur eſſonium *de malo lecti* ſemper ſe tenet, ſed ſemel poteſt reus tantum capere languorem & non plus, & ſi reus eſſoniet ſe hodie de *malo lecti* & prius ceperit languorem, dabitur ei dies per eſſonium ſuum ad proximum diem placiti, & omittentur mittendi quatuor milites, quia non poteſt reus capere languorem pluſquam ſemel. & quia reus alitèr, ut dictum eſt, ut ſentio, non poteſt dedicere demandam petentis quantum ad hunc diem, niſi aliquis reſpondeat, tranſeat per hoc eſſonium hodie & die ſequenti. Ad alia decurramus.

CAP. XIII.

Sextus *dies placiti.* **Voucher. Recoverie & counterpleas ſur ceo. Voucher d'enfant.** Warrantia *ex* Dedi. *ex* homagio *&* ſerviciis *receptis.* **Age.**

SExto die placiti ſi reus ſe eſſonians de *malo lecti* defecerit, currat lex communis contra eum ſicut faciendum tertio die ut ſuperiùs quando fecit defaltam poſt languorem. ſi autem reus appareat hodie, quid faciendum eſt? Si habeat warrantum eſt ne bonum quod vocet hodie vel non? Diſtinguendum eſt. Si iſte reus ita recentèr feoffatus fuerit vel anteceſſor ejus ab ipſo warranto vel anteceſſore ſuo qui nihil ſciat vel poſſit dicere a ſe ipſo contra tenentem, ut per quietum clamium vel hujuſmodi, Tunc vocet hodie ad warrantiam ſi quem habuerit. Sed ſi aliquid actum fuerit inter ipſum reum & petentem vel anteceſſores eorum per quod petens excludi debet ab actione ſua id proponat tenens utpote ſi habet quietum clameum ab ipſo petente, vel ſi aliàs in Curia lis decidatur per aliquem finem inter eos, vel quod non poſſit reſpondere ſine participibus, vel quod non teneat totam terram petitam, ſi ita ſit & alia ſimilia bonum eſt proponere

antequam vocet ad warrantiam. Si autem reus vocare voluerit ad warrantiam cum petens loquutus fuerit per verba curiæ. reus defendet vim & injuriam & dicet. **Jeo vouche a garrant per aid de ceſt court B.** & dicit hoc verbum **per l' aid de ceſt court** quia vocator non poteſt facere vocatum venire ad Curiam autoritate ſua propria & tunc petens habebit hoc breve ad faciendum warrantum venire. *Rex vicecomiti ſalutem. Summoneas per bonos ſummonitores* B. *quod ſit coram Juſtitiariis noſtris apud Weſtmonaſterium tali die ad warrantizandum* W. *unam carucatam terræ cum pertinentiis in* H. *quam* Richardus le Jay *in Curia noſtra coram Juſtitiariis noſtris clamat ut jus ſuum verſus prædictum* W. *& unde idem* W. *in eadem Curia noſtra vocat prædictum* B. *ad warrantum verſus eum, & habeas ibi ſummonitores & hoc breve.* Ad quem diem tenens poteſt eſſoniari de *malo veniendi* ſic W. *qui vocat* B. *ad warrantum verſus* Richardum le Jay *de placito terræ per talem.* Warrantus autem vocatus appareat ſed nihil faciendum eo die quia non habet partem adverſam, licet principaliter ſequitur eſſonium illud, & tunc reddat eſſonium tenentis. dabitur petenti idem dies ut eſſoniatori & conſimiliter; warranto vocato unus & idem dies. Ad quem diem warrantus poteſt eſſoniari de *malo veniendi*, ſic. B. *quem* W. *vocat ad warrantum verſus* R. *de placito terræ per talem.* quo die tenens non appareat ſed dabitur ſibi & petenti & eſſoniatori vocati unus & idem dies. Nec plus fiat illo die quia primus tenens jam ſubſtituit ſibi alium tenentem per vocationem ſuam. Dato autem die per illud eſſonium poteſtne warrantus eſſoniari de *malo lecti* necne? de cætero non poteſt, niſi poſt vadiationem duelli vel poſitionem in magnam aſſiſam. Vocatio autem ad warrantum ſic debet irrotulari. *Richardus le Jay petit verſus* W. de Huſe *unam carucatam terræ cum pertinentiis in* H. *ut jus ſuum &c. &* Willielmus *venit & vocat inde ad warrantum per auxilium Curiæ* B. *& habuit diem &c.* & ſi *B.* vocatus venerit & vocat alium tunc ſic. *Richardus petit verſus* B. *quem* W. *vocat ad warrantum & qui ei warrantizet unam carucatam terræ &c. ut jus ſuum &c.* & quotquot fuerint warranti vocati, tot ſucceſſivè eſſonia jactari debent. Et primus reus poſt ſingulorum apparitionem ſemper poteſt eſſoniari de *malo veniendi*; ſi autem warrantus defecerit poſt eſſonium, capiatur de terra ipſius ad valentiam in manum domini Regis per *magnum cape.* Rex *vicecomiti ſalutem, Cape in manum noſtram per viſum legalium hominum &c. de terra* B. *ad valentiam unius carucatæ terræ cum pertinentiis in* H. *quam* Richardus de Jay *in Curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium clamat ut jus ſuum verſus* W. Huſe, *& unde idem* W. *in eadem Curia vocat prædictum* B. *ad warrantum verſus eum pro defectu ipſius* W. *& diem captionis &c.* omnia ut ſupra in *magnum cape* in prima defalta tenentis poſt primum eſſonium. hæc defalta intrabitur ſic. *Willielmus Huſe obtulit ſe quarto die verſus* Richardum le Jay *de placito unius carucatæ terræ cum pertinentiis in* H. *quam* Richardus le Jay *in Curia noſtra coram Juſtitiariis noſtris apud Weſtmonaſterium clamat ut jus ſuum verſus eum. & ipſe non venit. & habuit diem per eſſonium ſuum ut ſupra.* Judicium. *de terra prædicti* Richardi *capiatur in manum domini Regis ad valentiam &c.* ad quem diem ſi warrantus defecerit Richardus recuperabit ſeiſinam verſus eundem *W.* & *W.* verſus *B.* per equipollentiam ſtatim & ſine difficultate per *Scias*, & hoc erit de pluribus warrantis vocatis ſucceſſive. Si primus vocatus defecerit petens per defaltam recuperabit ſeiſinam ſuam verſus primum tenentem & primus tenens verſus primum vocatum & ille verſus ſecundum & ſic de ſingulis. Warrantus autem vocatus poteſt per exceptiones diverſas derogare jus petentis, ſicut & tenens & ponere ſe in *magnam aſſiſam*, vel defendere jus ſuum per (43) *duellum in omni eventu*, ſive determinare negotium per diverſas reſponſiones, utpote per *finem* in Curia domini Regis *finem duelli*, per *quietam clamiam* factam, exceptionem *Baſtardiæ*, & conſimilia quatenus viderit expedire. Eſto quod reus vocet ad

(43) *Duellum in omni eventu*] That is, *Combat a tout oultrance*, i. e. battaile to the utmoſt, according as the law requires. So *pag.* 9. *ſupra*, he hath *proſequi in omni eventu*, to follow the ſuit to the utmoſt. Is not tout attrenche in the defences corrupted from tout oultrance? ſee *Nou. Narrat. fol.* 3. *a.* 2 *Ed.* 3. *fol.* 64. *a.* Baſſet.

warrantiam

warrantiam & reo eſſoniato, appareat warrantus, dico quod warrantus non poteſt intrare in warrantia ſine ſuo vocatore, & ſic per eſſonium ipſius rei dabitur dies ipſi vocato. ad quem diem apparente vocatore ille vocatus facit defaltam. Quid juris? Petens autem dico ſequetur defaltam illam. verſus quem? Certe verſus vocatum ad warrantiam & non verſus vocatorem. Quia vocator ubi & quando debuit vocavit & poſt vocationem ſuam eſſonium habuit, & die ſibi dato debitè comparuit, unde conſtat quod nullus deliquit niſi vocatus ad warrantiam. Quæro tunc cujus naturæ debeat eſſe defalta. utrum debeat exequi per *magnum cape* aut *per parvum*. per *parvum cape* fiat hujuſmodi executio, non pro eo quod vocatus intravit in Curiam ſine reſponſione facienda (ut prædictum eſt in warrantia intrare non poteſt ſine ſuo vocatore) ſed quod die ſibi dato in eſſonium vocatoris defecerit præciſè. Et ideo exeat ſuper ipſum *parvum cape* pro vocatore & petens recuperabit ſeiſinam verſus eum de petitis. Et ſciendum quod vocatus non poteſt habere viſum terræ quòd debet benè ſcire unde vocatur ad warrantiam. Et generaliter accidit quod vocator prius habet viſum. Caveat rurſus is qui vocat ad warrantiam quod non *vocet minorem*; niſi habeat (44) cartam de feoffamento in manibus per quam vocat. Quod ſi non fecerit amittit pro ſe & hæredibus ſuis ſeiſinam imperpetuum. Tamen ex officio ſuo Juſtitiarii poſſunt ſibi facere gratiam ſi voluerint. Quum autem ſupradictum eſt quod eſſonium de *malo veniendi* generaliter ſequitur eſſonium de *malo lecti*; inde quæro ſi vocatus ad warrantiam poſtquam eſſoniatus fuerit primo die de *malo veniendi* poſſit ſe eſſoniare de *malo lecti*. Conſequentèr non poteſt, antequam warrantizet ſed poſt poteſt. Eſto quod duæ ſorores tanquam unus hæres, una videlicet major & altera minor vocentur ad warrantiam. quid juris? appareant ambæ in Curia & minor ſe alleget eſſe infra ætatem & petat cuſtodem & habebit. major autem non reſpondebit, ſine ſorore minori. Et remanebit loquela illa ſine die uſque ad ætatem minoris prædictæ. Et cum minor major fuerit, reſummoneatur loquela in eodem ſtatu in quo dimiſſa fuit. Idem dico de quibuſlibet participibus terrarum, de quibus quidam ſunt minores & quidam majores. Ex juris ordine ſiquidem habemus quod (45) minor non *habet legem*, id eſt quod non poteſt facere *legem*. & hoc ſequitur quod non habet eſſonium de *malo veniendi*, nec per conſequens de *malo lecti*. Quid erit tunc cum aliquis minor implacitetur, poſſit gaudere hujuſmodi eſſonio an non? ſi minor ille feoffatus fuerit infra ætatem, ſive reus ſit, ſive per reum vocatus ad warrantiam, ad evitandum dilationes ſuas non amittat propter teneritatem ætatis ſuæ quia per feoffamentum jam efficitur major in hoc caſu & habeat eſſonia ſua ſupradicta. Quum autem plerique ſentiunt minus inſtructi in legibus terrarum quod warrantia non jacet in Chartis, ubi hæc clauſula *Ego & hæredes mei warrantizabimus* non inſeritur, opus eſt inde certitudinem exponere. In qualibet ſimplici charta de feoffamento per hoc verbum *dedi* quamvis plus de warrantia non ſpecificatur, (46) tenetur donator & ejus hæredes warrantizare ſi ad horam vocati fuerint, niſi in feoffamento i. in carta aliquod ſpeciale huic contrarium apponatur. Sic contigit inter *A.* & *B.* coram *R. de Thurkelby* unde poſtea fuit duellum vadiatum & arrainatum.

(44) *Cartam de feoffamento*] Of the anceſtor of the infant, whoſe heire he is. For otherwiſe the tenant failes in the voucher of an infant. See *Bracton, lib.* 5. *tract. de warrantia, cap.* 2. §. 2. 43 *Ed.* 3. *fol.* 3. *&c.*

(45) *Minor non habet legem*] For, in the warranting the eſſoine, oth is to be taken. See *Bracton, fol.* 337. & 338. and *Breton, cap.* 125. *fol.* 284. *b. Habere legem* is here to be able to take a legall oth, and *facere legem* (as at this day) to take it. See in the Notes to (*) *Forteſcue*, of *legem terræ*. By *Bracton* alſo, *fol.* 340. *b.* an enfant cannot have theſe eſſoins *quia jurare non poteſt nec eſſonium warrantizare.* ſee 38 *Ed.* 3. *fol.* 8. *b.* 32 *Ed.* 3. *tit. per quæ ſervitia* 9. 26 *Ed.* 3. *fol.* 63. & 64.

(46) *Tenetur donator & ejus hæredes*] So muſt you read; ſo was the law in feoffments before the Statute of *Quia emptores &c.* when a tenure was reſerv'd to the feoffors. See *Stat. de Bigamis, cap.* 6. 13 *Ed.* 1. *apud Weſt. tit.* Garranty 92. & 13 *Ed.* 1. *tit.* Voucher 290.

(*) Cap. XXVI. Not. h (16).

Non autem dico quod assignati donatoris debeant per illud verbum *dedi* warrantizare hujusmodi feoffato; nisi specificetur in charta donatoris, quod ille & hæredes & assignati sui debeant warrantizare. verbi gratia. Si hujusmodi donator antequam feoffasset istum qui modo vocat ad warrantiam habuisset tres acras terræ, de quibus unam dedit isti de quo loquor & postea (47) residuas duas *C.* vel *D.* nulla mentione facto in carta primi feoffati quod assignati dicti donatoris debeant warrantizare. licet, dico, tertia acra annexa fuerit prædictis duabus acris, non tenetur assignatus ille warrantizare. Et quid si donator talis penitus donaverit & fuerit ita debilis quod non habeat unde warrantizet, cum vocatus fuer t ut sæpe contingit. In hoc casu nihil scio consulere, nisi quod ille feoffatus adquirat sibi confirmationem a Capitali Domino si fieri posset. Et si capitalis dominus illud confirmaverit & vocatus fuerit inde ad warrantiam oportet quod warrantizet, licet non nominet donatorem. tali dico ratione. Iste capitalis dominus de quo tenementum illud tenetur, cum se obligaverit ad hoc, per confirmationem suam, omnia verba in dicto feoffamento contenta tam ic *dedi* quam ic *confirmavi* una cum dicto donatore simul firmat conjungens & obligans fortitèr seipsum ad pactionem tenendam dicto feoffato quasi pro defectu ipsius donatoris. Licet autem superius in hoc capitulo dicatur quod minor respondere non debeat si implacitatus fuerit, nec warrantizare cum vocatus fuerit, antequam pervenerit ad ætatem, non debeat nisi in minore ætate feoffatus fuerit, dico in eadem ætate respondeat. In actione siquidem dotis respondeat minor semper, sive petatur ab eo dos, sive in dote petenda si vocatus fuerit ad warrantiam. Sed ista lex videtur esse contraria illi quæ supra scribitur quæ dicit quod minor respondere non debet donec pervenerit ad ætatem nisi in minori ætate feoffatus fuerit. Petitio siquidem dotis non præjudicat proprietatem juris hæredis a quo petitur dos. Quia cum mulier petat dotem i. tertiam partem hæreditatis, hæres ipse manifestatur, & quod ea decedente pars tertia revertatur ad duas, & quod hic non jacet hujusmodi exhæredatio hæredis. Et si mulier expectaret ætatem minoris poterit interim in fata decedere & sic per consequens semper dotem amittere, statuitur ex jure quod minor in hoc casu respondeat. Si quis autem vocaverit minorem ad warrantiam non habens in promptu cartam vel aliud per quod ipse minor si major esset respondere deberet, sine ulteriore dilatione ad calumniam minoris amittet ab eo petita. Dato siquidem quod sorores sint participes alicujus hæreditatis de quibus una tantum vocata fuerit ad warrantiam quæ se nihil tenere assereret nisi in propartia & peteret judicium deficut vocata sola fuit ad warrantiam sine participe; Distinguendum est utrum terra partita esset inter participes illas necne. Si impertita fuerit, dicta responsio tenet locum, si verò partita & illa quæ sola vocata fuerit ad warrantiam de proparte sua receperit homagium & servitium vocantis, respondeo quod *sine participibus respondere non debet* non habet locum, sed debet warrantizare præcise. nisi aliud de novo proponat versus ipsum vocantem. Adhuc autem de warrantia sic definio. *Walterus petit versus* Thomam *unam carucatam terræ cum pertinentiis in* H. *& versus* R. *tantum ut jus suum, & unde quidam* B. *antecessor suus fuit seisitus in dominico suo ut de feodo & jure tempore &c. &* Thomas *venit & vocat inde ad warrantiam quendam* G. *qui præsens est & petit sibi ostendi per quod debeat ea warrantizare & dicit quod tenet dictum tenementum de ipso* G. *& ei inde fecit homaginm, ita quod ipse est in seisina de homagio & similiter de servitio suo scilicet de tali redditu assiso & similiter de secta ad Curiam suam ibi de tribus septimanis in tres septimanas. Et prædictus* Thomas *quesitus si habeat aliquam cartam vel instrumentum de dicto* G. *vel ab antecessoribus suis per quod teneatur prædictam terram ei warrantizare*

(47) *Residuas duas* C *vel* D.] Its suppos'd by this, that the other land, of which the feoffor is seis'd at the feoffment might be bound by the warranty comprehended in the deed. So also was the law taken in 16 *Hen.* 3. in the case of *Alice de Ware*, reported by *Bracton*, *fol.* 382. *a.* being (it seems) the same with 17 *Hen.* 3. *tit.* **Recovery en value** 25. and see 32 *Ed.* 1. *tit.* **Voucher** 292. But its plain now, no land is bound but what the feoffor or his heire hath at the time of the **Voucher**, or **Warranty de chartres** brought.

dicit quod non, & dicit quod non debet ei warrantizare ut ſibi videtur ratione homagii tantum deſicut nihil oſtendit neque cartam neque inſtrumentum aliquod per quod teneatur ei warrantizare, tum quia in Cancellaria domini Regis *nunquam conceditur aliquod breve de warrantia niſi expreſsè fiat mentio quod is qui vocat ad warrantiam habeat cartam illius quem vocat vel alicujus anteceſſoris ipſius, tum quia nec prædictus* Thomas *nec anteceſſores ſui inde fuerint ſeiſiti ab eo nec ab anteceſſoribus ſuis. Dicit enim quod quidam* Richardus le Jay *feoffavit quendam* Widonem *avum prædictæ* Thomæ *cujus hæres ipſe eſt de prædicto tenemento per prædictum ſervitium per annum. Et idem* Richardus *dedit cuidam* Willielmo *avo prædicti* G. *cujus hæres ipſe eſt homagium & ſervicium* Widonis *de prædicto tenemento ita quod idem* Wido *ſponte & voluntate ſua atturnavit ſe de prædicto ſervicio* Willielmo, *& poſtea deſcendit prædictum ſervicium ipſi* G. *jure hæreditario, & dicit quod quando recepit homagium de prædicto* Thoma *recepit illud* ſalvo jure cujuſcunq; *Eò quòd audivit quod* Walterus *qui modo petit vendicabat jus in prædicta terra, ea ratione quod anteceſſores ſui & anteceſſores prædicti* Thomæ *exierunt de duobus fratribus et idem* Walterus exiit *de fratre antenato ut aſſerebat & deſicut idem* G. *cepit homagium & ſervicium ſuum* ſalvo jure uniuſcujuſque, *Judicium ſi debeat ei warrantizare ratione prædicti homagii tantum verſus ipſum* Walterum *qui clamat eſſe propinquior hæres de eodem ſtipite & eadem linea parentelæ.* Adhuc autem videtur quod non debeat ei warrantizare ratione prædicti homagii tantum. Hac ratione homagium non obligat nec excludit aliquem ab actione niſi tantum perſonam illius quæ illud homagium receperit. verbi gratia. ſi quis ceperit homagium de aliquo tenemento ratione cujus homagii excluditur quod non poteſt in vita ſua tenementum illud petere in dominico, & ſi jus haberet in eodem hæredes ſui non excluderentur ratione dicti homagii quin bene poſſint tenementum illud petere in dominico ſi voluerint. Et ſi idem G. warrantizaret prædicto *Thomæ* prædictam terram & eandem terram per conſiderationem Curiæ domini Regis poſtea amitteret verſus prædictum *Walterum*, tunc teneretur facere prædicto *Thomæ* Exchambium ad valentiam prædictæ terræ, abſque hoc quod idem G. nec hæredes ſui aliquid poſſint recuperare verſus prædictum *Thomam* & hæredes ſuos de prædicto exchambio in perpetuum. & ſic contingeret quod hæredes ipſius G. excluderentur ab agendo de prædicto exchambio, per prædictum homagium quod idem G. ceperit quod manifeſtè eſt contra rationem prædictam. Excuſſis quæ in præſenti recoluntur quoad vocationem warranti & quoad exceptiones dilatorias de *peremptoriis* loqui congruit iſto loco. Ad primum autem diſtinguendum eſt utrum fuerit principalis reus aut per vocationem ſubſtitutus qui reſpondere debeat, quia utrique competunt exceptiones futuræ quæ tales ſunt & vigent ſingillatim. *Præſcriptio temporis* probata excludit petentem & hæredes ſuos ab actione quæ talis eſt in hoc brevi, ſi dicatur quod is de cujus ſeiſina petit actor non fuiſſet in ſeiſina rei petitæ (*) Tempore Regis *Henrici* patris Regis *Edwardi* nunc, peremptoriè diſcinditur actio actoris.

Radulphi de *Hengham*

Summæ Magnæ

F I N I S.

Deeſſe videntur plurima; ſed ita finiunt omnia, quæ vidiſſe nobis contigit, exemplaria.

(*) *Al.* ultra tempus Regis *Richardi* avunculi Regis *Henrici* &c. This (as ſome copies are) agrees with the Law of *Weſtm.* 1. *cap.* 39. wherein the writ of right was limited to *Richard* 1. his time, which limitation continued till 32 *Hen.* 8. *cap.* 2.

SUMMA PARVA
RADULPHI de *HENGHAM.*

CAP. I.

De Eſſoniis.

NOTANDUM quod quinque ſunt eſſonia. *Primum* videlicet de *ultra mare*. *Secundum* autem *de terra Sancta*. Iſta duo jacent in principio placitorum & non alibi. Et niſi veraciter proponantur vertenda ſunt in defaltas. & quomodo Eſſoniatus de *ultra mare* vertitur in defaltam, queratur in ſtatuto *primo Weſtmonaſt.* cap. XLIV. Induciæ primi eſſonii XL. dies. Induciæ ſecundi unius anni & diei. & continuò poſteà jacet eſſonium de *malo veniendi* & non econverſo. *Tertium* de *malo veniendi*, cujus adjornamentum eſt quindecem dies, & jacet in quolibet placito ante apparentiam & poſt; exceptis quibuſdam caſibus, ut in brevibus *Aſſiſarum*, *Attinctarum*, & *Juratarum de utrum*. Et intelligendum eſt quod poſt apparentiam, nec Actori nec Reo competit iſtud eſſonium, nec Reo alicubi in diſſeiſina. Quæratur autoritas in *primo* Stat. *Weſtmonaſt.* cap. XLII. & in *ſecundo* Stat. *Weſtm.* cap. XXXII. Item nec in *appello* de morte hominis jacet iſtud eſſonium ut in *ſecundo* Stat. *Weſtm.* cap. XIV. Item in quolibet placito in quo allocatur iſtud eſſonium poſtquam partes deſcenderint in inquiſitionem, non jacet, niſi ſemel & hoc ad proximum diem poſt inquiſitionem adjudicatam. Et poſt alias apparentias ſubſequentes non remanebit per iſtud eſſonium inquiſitio capienda. Item poſt diem datum prece partium non jacet iſtud eſſonium; ut in caſu quo partes concedunt venire ſine eſſonio. Quæratur autoritas utriuſque in *ſecundo* Stat. *Weſtm.* cap. XXXI. Item poſt diem datum de die in diem quod habet fieri in eodem termino non jacet continuè poſt defaltam in actione Reali. non competit in perſonali. non jacet continuè poſt *magnam diſtrictionem*, nec poſt *magnum cape*, nec poſtquam præceptum eſt vicecomiti quod faciat *aliquem venire* vel quod *habeat corpus* alicujus, vel quod *capiat* aliquem, vel poſtquam mandatum fuerit Epiſcopo, quod faceret *venire clericum* ſuum. In caſu etiam quando vir & uxor vel duo tenentes in communi implacitantur, non habebunt de cætero niſi unicum eſſonium, quia ſi unus ſe eſſoniaverit & alter comparuit ad alium diem ille qui comparuit non poteſt ſe eſſoniare quia ſunt in ſtatu quaſi unius perſonæ. quæratur autoritas in *primo* Stat. *Weſtm.* cap. XLIII. & in Stat. *Gloceſt.* cap. X. Et iſtud ſolum eſſonium & non aliud tam jacet attornato

tornato quam principali perſonæ. Ita tamen quod ſi quis eſſoniaverit ſeipſum & non attornatum ſuum, non allocabitur ei eſſonium ſuum. Et ſi duos habuerit attornatos vel plures, & unum & non alium eſſoniaverit vel ſi plures habuerit & miſerit unum eſſoniatorem non allocabitur ei eſſonium. Sed videtur inſtantiam recipere, in caſu quo lex vadiata fuerit per atturnatum, poſtquam atturnatus ſe non poterit eſſoniare, quia poſt legem vadiatam dictum eſt per Juſtitiarios atturnato quod faciat venire dominum ſuum in propria perſona ſua ad faciendum legem. *Quartum* eſſonium eſt de *malo lecti*, cujus adjornamentum eſt in *morbo tranſeunti* ſicut adjornamentum de *malo veniendi*, ſecundum diſcretionem Juſtitiariorum, & in *languore* unius anni & unius diei a die viſus ſui apud *Turrim London.* Et habet iſtud eſſonium quaſdam proprietates quas non habent alia eſſonia, videlicet quod alia eſſonia in ipſo primo die placiti proferri debent, iſtud in tertio die præcedenti. Item in aliis eſſoniis ſufficit unus eſſoniator, in iſto exiguntur duo eſſoniatores. Item alia eſſonia jacent ſine eſſonio præcedenti immediatè, iſtud eſſonium non jacet niſi immediatè præcedat eſſonium de *malo veniendi.* Præterea in aliis eſſoniis datur certus dies, ſed in iſto eſſonio dicitur eſſoniatoribus quod eant ſine die & jacet ſolummodo in omni breve *de recto*, ante apparentiam & poſt, exceptis quibuſdam caſibus, ſcilicet in brevi (1) in quo non jacet *duellum*, vel *magna aſſiſa*, ut inter eos qui per eundem ſanguinem & eundem diſcenſum clamant. Item in aliis brevibus de recto, quum placitum fuerit in eodem comitatu non jacet niſi cauſa ſit vera; quia ſi convincator falſa, vertetur in defaltam. Quæratur autoritas in *ſecundo* Stat. *Weſtm.* cap. XIX. *Quintum* eſſonium eſt de *ſervicio domini Regis* & jacet in quolibet placito & loco, exceptis quatuor caſibus, videlicet *Novæ diſſeiſinæ*, de *Dote unde nihil habet*, *ultimæ præſentationis*, & in *Appello* de morte hominis. In quibus non jacet, eo quod Rex non concedit protectionem ſuam in caſibus illis & aliis caſibus in quibus nullum jacet eſſonium. Et ſolummodo allocabitur iſtud eſſonium ſi ad diem datum proferatur warrantum Regis, & licet iſtud eſſonium videatur allocatum eſſe eo quod adjornatur non tamen adjornatur ſine conditione ſicut alia eſſonia, quia ſi ad diem datum non proferatur warrantum, ſequitur pæna talis. qui non habet warrantum in actione reali vertetur in defaltam. in actione perſonali condemnabitur ad expenſas. quæratur auctoritas in Stat. *Gloceſt.* cap. VIII.

CAP. II.

Brevia de Dote.

SCiendum quod tria ſunt brevia *de dote unde nihil habet*, videlicet unum breve de communi dote quod eſt tale. *Præcipe* A. *quod juſtè &c. reddat* B. *quæ fuit uxor* C. *rationabilem dotem ſuam quæ eam contingit de libero tenemento quod fuit prædicti* C. *quondam viri ſui in tali villa unde nihil habet &c.* Et per iſtud breve petitur tertia pars tenementi quod fuit viri ſui die quo eam deſponſavit & poſtea. Et aliquando *medietas* ut de *ſocagio* & tamen non de omnibus ſed de antiquis & de hiis de quibus mulieres dotari conſueverint ſecundum conſuetudinem certæ patriæ. Et iſtud breve aliquando eſt clauſum ut in caſu quando nihil habet & aliquando patens, quando aliquid habet & aliquid deficit. In quibus caſibus unum & aliud locum habent. Invenietur in Proviſione de *Merton*, cap. I. In ſupradicto brevi clauſo adjudicari debent *damna* mulieri de tenementis de quibus vir obiit ſeiſitus. De tenementis vero alienatis per virum de quacunque dote petita per breve patens non adjudicantur *damna.* Aliud eſt breve *de dote nominata*, quando vir dotat uxorem ſuam & hoc aliquando de minori

(1) *In quo non jacet duellum &c.*] See 18 *Hen.* 3. *tit.* Droit 62. & 13 *Ed.* 1. *eod. tit.* 51. *Stat. de Mag. aſſiſ. eligenda* & Hengham pag. ult.

quam de tertia parte, & de hoc tenebit ſe contentam. Et aliquando de tertia parte in certo loco & (2) ſi non excedit tertiam partem remanebit illa certa dos. aliquando autem de majori & remanebit ei quouſque admenſuretur & reddatur ei per breve *de admenſuratione dotis*; & in hoc brevi ſicut in aliis adjudicantur damna. Et eſt *breve de dote nominata* tale. *Præcipe* D. *quod juſtè &c. reddat* B. *quæ fuit uxor* C. *tale manerium de quo prædictus* C. *eam dotavit nominatim* ad oſtium eccleſiæ *quando eam deſponſavit &c.* Aliud eſt breve quando filius dotat uxorem ſuam de tenementis patris ſui & de voluntate patris ſui quod aliquando eſt de certo tenemento nominato; aliquando de tertia parte omnium tenementorum patris ſui, quo ſimiliter *damna* adjudicantur, & eſt breve tale. *Præcipe* A. *quod juſtè &c. reddat* B. *quæ fuit uxor* C. *tale manerium* vel *tertiam partem tenementorum de quo* vel *de qua prædictus* C. *eam dotavit de aſſenſu & voluntate* E. *patris ipſius* C. *ad oſtium eccleſiæ &c.*

CAP. III.

Exceptiones contra Brevia de Dote.

EXceptiones contra prædicta brevia, & maximè contra primum poteſt objici quod demandans dotem ſuam habere non debet, eo quod prædictus C. quondam vir ſuus die quo eam deſponſavit vel unquam poſtea non tenuit tementum unde petit dotem in dominico ut de feodo. Et per hoc non excluditur, quin habebit dotem de tenemento quod per virum ſuum vel anteceſſorem dimiſſum fuit ad terminum ante deſponſationem & remanſit in manu terminarii uſque ad obitum viri. quia licet commodum rei fuit terminario, tamen feodum & dominicum remanſit pænes virum. Item in omnibus brevibus prædictis poteſt objici quum vir ſuus commiſit feloniam, ob quam fuit *ſuſpenſus*, *utlagatus* vel alio modo *morti damnatus*, vel *demembratus*, vel apud **Dovere** (3) *infaliſtatus*, vel apud **Southampton** *ſubmerſus* (4) vel apud **Winton** *demembratus*, vel (5) *decapitatus* ut apud **Northampton**, *in mari ſuperundatus* ſicut in aliis partibus portuum. nec recolo in aliis caſibus in quibus homo habetur pro felone, niſi in caſu (6) ubi quis movet guerram contra Regem, vel Regnum, ita quod abjuravit regnum, vel in fugiendo tanquam publicus latro fuit decollatus. Item quod inter ipſam & virum ſuum *divortium* fuit celebratum.

(2) *Si non excedit tertiam*] For, by the ancient opinions, only a third part might be aſſign'd *ad oſtium eccleſiæ*. So *Glanvil, lib.* 6. *cap.* 1. *Bracton. lib.* 2. *de acq. rer. dom. cap.* 39. *& tract. de act. Dotis. fol.* 315. *a. Breton, cap.* 113. But ſee 9 *Hen.* 3. *tit.* **Dower** 190. & *Fitzh. Nat. Br. fol.* 150. P.

(3) *Infaliſtatus*] It appears that ſeveral cuſtoms of places, made in thoſe daies, capitall puniſhments ſeverall. But, what is *infaliſtatus?* in regard its of a cuſtom us'd in a Port town, I ſuppoſe it was made out of the *French* word *Falaize*, which is *fine ſand by the water ſide*, or a bank of the ſea; in this ſand or bank it ſeems their execution, at *Dover*, was. In this place the copies varie; no one having all the Puniſhments; but for the raritie of the remembrance, I took out of divers copies all theſe. The old *Engliſh* tranſlation here helpt not.

(4) *Vel apud* **Winton** *demembratus*] That is of his Eies and Stones. For, ſuch was anciently the puniſhment of Felons in *Wincheſter*; as alſo in *Walingford*. One autority juſtifies both; in 45 *Hen.* 3. *Berk. Coram* Gilberton de Preſton *& ſociis ſuis in Oct. Purif. B. Mariæ Rot.* 29. the Jurors of the Borough of *Walingford*, give in *quod nullus de natione iſtius Burgi pro quocunque facto quod fecerit, debet* ſuſpendi, *imo ſecundum conſuetudinem iſtius Burgi debet* Oculis & Teſticulis *privari, & tali libertate uſi ſunt a tempore quo non extat memoria*, and ſo they there ſay one *Benedict Hervey* was lately ſo puniſht. *Et, quæſiti Juratores, ſi tali libertate uſi ſunt; dicunt quod à tempore* Henrici *avi domini Regis nunc uſi fuerunt eadem libertate per Cartam ejuſdem D. Regis quam eis fecit per quam eis conceſſit omnes libertates quas Civitas* Winton *habet &c.* They challenged this libertie from a Charter of *Hen.* 2. who gave them all ſuch liberties as *Wincheſter* had.

(5) *Decapitatus*] See *Regiſt. Orig. fol.* 165. *a. & Fitzh. Nat. Br. fol.* 144. H. of beheading for felony.

(6) *Ubi quis movet Guerram &c.*] See 8 *Ed.* 3. *fol.* 388. *a.* 7 *Hen.* 4. *fol.* 32. *b.* & 47. *a.* 15 *Ed.* 3. *tit.* **Petition** 2. *Plowd. Comm. fol.* 263. *a.* the ſadlers caſe in *Rep.* 4. *fol.* 57. *b. Stamford, fol.* 189. and *Park.* §. 391.

Item ſi vir ſuus amiſerit tenementum unde illa dotem petit per judicium excepto judicio per defaltam, de quo dicitur in *ſecundo* Stat. *Weſtmonaſt.* cap. IV. Item amittit uxor dotem in caſu de quo dicitur in iiſdem ſtatutis cap. XXXVIII. (7) Item ſi minor exiſtens in cuſtodia alicujus ducat uxorem ſine aſſenſu domini ſui, & in minori ætate obierit, dotem amittit. Secus eſt ſi expectet ætatem. Item uxor quæ propter minorem ætatem ſuam, vel propter minorem ætatem viri ſui non poteſt (8) *dotem deſervire* ab actione dotis excluditur excepto tamen ſi a minori dotetur ex voluntate patris, quia licet ſit inhabilis ſecundum jus commune, voluntas tamen patris, quæ firmatur ſecundum conventionem, facit habilitatem. Alia vero exceptio eſt, ſi objciatur quod *non* fuit viro *legitimè deſponſata* &c. Sed iſtius exceptionis diſcuſſio pertinet ad epiſcopum & ordinarium, & ſecundum ejus reſponſionem procedatur ad judicium. Sed quid erit ſi pro una muliere petente dotem, cui objecta fuerit prædicta exceptio, ſcribatur epiſcopo, & per reſponſum epiſcopi mulier illa recuperabit dotem, & poſtmodum venerit alia mulier petens dotem de dono ejuſdem mariti & ſimiliter objciatur quod non fuit viro legitimo matrimonio copulata, & ordinarius ſcribat Regi quod ultima eſt uxor legitima, & quod deceptus fuit in priore caſu matrimonij? Dato hoc ſtabitur poſteriori mandato Ordinarij. Sic contingit de *Albræda* & *Alicia* de **Pasham.** Alia eſt exceptio, quod ſi petat dotem de muliere dotata dicitur quod de *dote non debet dotem habere*, ſed intelligendum eſt quod illa exceptio non repellit quamlibet mulierem ab actione vel a petitione dotis. Quia contingit in caſu. *Radulphus* habens unam carucatam terræ ducit uxorem & dotat eam & poſtmodum dat filio ſuo unam virgatam terræ qui ducit uxorem & dotat eam, mortuo filio *Radulphi*, uxor filij dotata eſt de tertia parte virgatæ terræ, mortuo *Radulpho* uxor *Radulphi* petit dotem de toto. Si objciatur ei quod de dote non debet habere dotem, non allocabitur ei exceptio illa, quia in priori contractu matrimonij inter *Radulphum* & uxorem ſuam adquiſitum fuit jus uxori prædicti *Radulphi* de toto. nec debet ei præjudicare ſecundus contractus inter filium *Radulphi* & uxorem ſuam poſt dotatam. Secus eſt ſi *Radulphus* obierit ante filium ſuum & dotem ſuam recuperaverit de tenemento quod *Radulphus* dedit filio ſuo & ſimiliter de tenementis quæ remanſerunt prædicto *R.* poſt illud donum, ſi poſtmodum prius mortuo *R.* prædicto, & poſtmodum filio *Radulphi*, veniat uxor filij & petat dotem verſus uxorem *Radulphi* quæ jus habuit in toto, obſtabit ei illa exceptio, quod *de dote dotem non habebit &c.*

(7) *Item ſi minor &c.*] By this, and what *Glanvil* hath *lib.* 7. *cap.* 12. it appears that in thoſe times greater prejudice was often to the heirs of both ſexes, by marriage without their Lords conſent, then the law ſince burdens them with.

(8) *Dotem deſervire*] That is *demereri.* By ſuch uncertainty, without limitation of yeers, thoſe old autors judg'd of a womans dower. So *Bracton, l.* 2. *c.* 39. *Breton, c.* 109. And by the *Roman* law *non poteſt videri nupta quæ virum pati non poteſt*; in ſo much that if a legacie be given to a yong girle, to be paid *quando nupſerit*, if ſhe take a Husband before ſhe be *viripotens*, the legacy is not yet due, by expreſſe text in ff *tit. Quando dies legat. vel fideicomiſſ. cedat. l.* 30. *quod pupilla.* So in the *Reg. Majeſt.* of *Scotland, lib.* 2. *cap.* 17. a woman looſes her dower *ſi ſit ita juvenis, quòd non poteſt habere rem, hoc eſt, coire cum viro ſuo.* But in our yeer books divers caſes are of later time touching a certainty of yeers, and now it is taken uſually (as *Littleton* ſaies) ſhe muſt be above nine. Beſides the common autorities, ſee *Fleta, lib.* 5. *cap.* 22. and for the two caſes of this matter, in 7 *Ed.* 2. *tit.* **Dower** 147. and 12 *Ed.* 2. *tit. eod.* 159. they are worth more obſervation in the report at large, which is extant in our *Inner-Temple* Librarie; the firſt is between *Symond* and *Benſter, fol.* 107. *a.* the ſecond is *fol.* 163. *b.* where *Berry* ſaies expreſſely, that it lies in the diſcretion of the Judges, whether ſhe deſerve dower or no.

CAP. IV.

De viſu concedendo.

UT ſciatur in quibus caſibus viſus terræ concedatur ſciendum eſt quod in omnibus brevibus quæ incipiunt *Præcipe* tali *quod reddat* aliquid quod actor petit tenere ad minus ad vitam, vel ad terminum vitæ alterius, ut in brevibus *de recto* & *ingreſſu* & *conſanguinitate* de *forma donationis*, de *Eſchaeta* & ſimilibus in quibus tenetur in dominico, viſus conceditur; exceptis quibuſdam caſibus. Quia per hoc quod dicitur *ad terminum vitæ* excluditur breve de *cuſtodia*. Per hoc quod dicitur breve *de Recto de tenementis*, excluditur breve de *conſuetudinibus* & ſervicijs, & breve de *Recto de advocatione eccleſiæ*, in quo viſus non conceditur ſi tantum ſit una eccleſia in villa in brevi contenta. Et ſi plures ſint eccleſiæ & nominetur eccleſia talis ſancti, ſi plures eccleſiæ de illo ſancto in eadem villa non habeantur. Per hoc quod dicitur *tenens in dominico*, excluditur warrantus ſine quo tenens ſe non poſſe dicit reſpondere. exceptis quibuſdam caſibus &c. Cujuſmodi ſunt *commune breve de dote unde nihil habet* de tenementis unde vir ſuus obijt ſeiſitus. Item breve de dote aſſignata, quando filius dotat uxorem ex voluntate patris & alij ſunt caſus expreſſi ex ſtatutis *Weſtmonaſt. ſecundi* cap. LIII. Per hoc quod dicitur *Præcipe quod reddat tenementum* excluditur breve *de nuper obijt* in quo viſus non conceditur licet tenementum per illud petatur. Alia ſunt pluria brevia in quibus viſus conceditur, nec tamen fit Mencio quod *aliquis reddat tali*, ſed *quod permittat &c.* Sicut in omnibus brevibus *de ingreſſu*, quæ proveniunt & originem habent a brevibus *novæ diſſeiſinæ* de *communia paſturæ*, & omnibus alijs de quibus fit mentio in *ultimo ſtatuto* Weſtmonaſt. cap. XXIX. Item in omnibus alijs brevibus de *ingreſſu de foſſato* de *ſtagno* &c. de quibus jacet aſſiſa exceptis quibuſdam caſibus paſturæ. Quia ſi petatur communia ubique in villa de qua fit mentio, non eſt neceſſe concedere viſum, ſed ſi in aliquo loco petatur & in aliquo loco non, neceſſario habet concedi. Unum eſt breve de recto quod non eſt de forma ſupradictorum brevium, ſcilicet *Quo jure* in quo (*) conceditur viſus, ſi actor dicat Reum nullo modo communicare in terris ſuis, ſicut dictum eſt de Paſtura. Sunt alia brevia quæ ad Vicecomitem pertinent placitanda quæ aliquando ponantur coram Juſtitiarius ut de *Domo*, *muro*, *porta*, *gurgite*, in quibus propter nocumentum, viſus conceditur, & de quibuſdam conſimilibus, ut de *mercato*, *feria*, *Ovili* non conceditur viſus quia non eſt neceſſarius.

(*) *Nonnullis MSS. non conceditur.*

CAP.

CAP. V.

De brevibus Aſſiſarum. *& primo de brevi* novæ Diſſeiſinæ.

SCiendum eſt de quibus jacet Aſſiſa, & quibus fit modis diſſeiſina, & quibus perſonis competit, & contra quos. De quibus, ſciendum eſt quod de tenementis cujuſmodi ſunt *terra pratum*, *Boſcus*, *Paſtura*, *Vaſtum*, *Piſcaria ſeparalis*, ad minus verſus deforciantes, *Gurgites* & alia quæ numerantur in *ſecundo ſtatuto* Weſtmonaſt. cap. XXIX. Quæ in ſeiſina alicujus ſunt aliquo titulo in feodo, vel ad minus ad terminum vitæ & hoc aliquando ad vitam poſſeſſoris, de quo non fit diſtinctio. Aliquando ad vitam dimittentis, ſuper quo diſtinguitur. vel dimittens nihil aliud habuit quam ad terminum vitæ ut *Rector eccleſiæ*, tenens in dotem, & conſimilibus in quibus caſibus transfertur liberum tenementum in poſſeſſorem, vel dimittens habens feodum transfert in poſſeſſorem ad vitam dimittentis reſervata reverſione hæredibus vel alijs in quo caſu aliquorum opinio eſt quod liberum tenementum non transfertur. Jacet & de *Foſſato proſtrato*, vel *levato*, *ſtagno proſtrato* vel *exaltato*, *ſepe proſtrata*, *levata* vel *exaltata*, via *obſtructa*, vel *arctata*, *aqua diverſa*, pro curſu aquæ ad nocumentum arctato. Quædam ſunt conſimilia ad nocumentum levata, de quibus non datur *Aſſiſa*, ſed pertinent ad vicecomitem placitanda, veluti *Domus*, *Virgultum*, *Porta*, *Ovile*, *molendinum Gurges*, & *Furnus*. Quædam & hijs ſimilia quæ ſunt ad nocumentum, quæ coram Juſtitiarijs ſunt placitanda, ut *feria*, *mercatum*.

CAP. VI.

De titulis. Hereditaria ſucceſſione, feoffamento, & Eſchaeta. *quomodo acquiritur* liberum tenementum.

ET quod dicitur ſupra de *titulo*, ſciendum eſt quod veri *tituli* ſunt *ſucceſſio hæreditaria*, *feoffamentum* [*perquiſitum titulo feoffamenti*] *Eſchaeta*. Sed in quibuſdam horum caſuum, major exigitur ſeiſina, ad liberum tenementum perquirendum, & in quibuſdam minor. Ut in ſucceſſione vero hæredi per pedis poſitionem adquiritur liberum tenementum, quia poſito pede adquiritur liberum tenementum de toto tenemento quod annectitur tenemento in quo pes ponitur, vel cui illud tenementum annectitur. Non ſic eſt de hærede non vero, veluti de vero Baſtardo vel nato ante matrimonium, vel alio de longiore ſanguine. Licet ante adventum veri hæredis ſtet in hæreditate per magnum tempus, videlicet per dimidium anni vel amplius, & poſtea verus hæres eum ejiciat, non propter hoc timere oportet verum hæredem breve novæ diſſeiſinæ, quia poſſeſſio non veri hæredis *ſeiſina* vel adquiſitio dici non debet ſed potiùs *Intruſio*. Si autem contingat quod poſt mortem alicujus intrat verus hæres, & alius qui verus non eſt, & ſimiliter morantur in poſſeſſione per magnum tempus, & poſtea verus hæres ejiciat non verum, non competit non vero actio vel remedium per diſſeiſinam. Sed ſi non verus ejiciat verum, vero hæredi competit actio, quia cum ambo eſſent in ſeiſina, ſeiſina dicitur illius qui majus jus habet. De titulo liberi tenementi per adquiſitionem per *feoffamentum*, multa ſunt conſideranda. Quia cum aliquis feoffat alium non tam cito transfertur liberum tenementum in feoffatum ſicut ſuperius dictum eſt in ſucceſſione hæreditaria. Quia primo videndum eſt utrum feoffator feoffat alium, abſque alterius præjudicio, in quo caſu per bonam tranſmutationem adquiritur feoffato liberum tenementum; de his maxime de quibus

ſe dimiſit ad plenum, nullo ſibi reſervato præter ſervicium. Et ſi fortè in præjudicium alterius fiat feoffamentum, non tam cito adquiritur liberum tenementum feoffato, ut in caſu quo feoffator ſe facit medium inter Capitalem Dominum & feoffatum, ubi oportet quod plena & pacifica ſeiſina fiat feoffato antequam competat actio ei verſus feoffatorem, contra quod tamen poteſt ſubveniri per finem *factum*, vel per *Recognitionem factam coram Rege vel Juſtitiarijs*, quarum virtute adquiret feoffatus liberum tenementum non obſtante contradictione capitalis Domini. Et ſimiliter ſi uxor dotata, vir tenens per legem Angliæ, vel aliter ad terminum vitæ, vel per feodum talliatum. in ſupradictis tenuris feoffato (9) requiritur longa ſeiſina & pacifica antequam adquiratur ei liberum tenementum. Et in hujuſmodi feoffamentis multa alia conſideranda, videlicet remota abſentia illius cujus intereſt; tempus quo ad ipſum devenire poſſit notitia, poteſtas ejus reſiſtendi & multa alia. Similiter de *Villano* alienante villenagium, & *Ballivo* alienante tenementum in cuſtodia ſua exiſtens, in quibus caſibus, de brevi ſeiſina, non adquiritur liberum tenementum. In titulo per *Eſchaetam.* adquiſitio quæ aliquando adquiritur Capitali Domino per feloniam tenentis & in aliis caſibus his ſimilibus, ut in reverſione poſt feodum talliatum de jure, & quod alicui competit per formam donationis, de facili adquiritur liberum tenementum ratione reverſionis ad perſonam à qua vel cujus anteceſſoribus exivit tenementum, ceſſante ſucceſſione revertendi, vel per formam donationis alicujus remanſurum. Sed in iſtis duobus caſibus diverſa exigitur verificatio in judicio. quia in reverſione ratione feodi talliati vel doni ſub conditione non exigitur quod clamans reverſionem ſcriptum aut aliquid aliud oſtendat ad intentionem ſuam probandam, quàm patriam; eo quod carta doni pænes adquiſitorem ex conſuetudine remanet & non pænes donatorem. Et ideo tenementum ſine oſtenſione cartæ ad donatorem reverti poteſt. In alio caſu quando debet remanere extraneæ perſonæ non (*) conjunctæ poſt mortem alicujus, neceſſe habet petens oſtendere finem vel cartam de forma doni. Et cum dicitur ſupra quod titulus liberi tenementi triplicitèr adquiritur, non propter hoc credat aliquis quin alia via adquiritur alicui liberum tenementum, attamen per aliquem colorem oportet quod ſupponatur prædictis titulis. verbi gratia. Quidam ingreditur per diſſeiſinam quæ nullum facit titulum; poſteà diſſeiſitus remittit & quietum clamat totum jus ſuum. Jam habet diſſeiſitor titulum liberi tenementi per quietam clamantiam diſſeiſiti ubi prius non habuit; &

(9) *Requiritur longa ſeiſina & pacifica*] For in thoſe times the law was taken, both that long ſeiſin ſo added a title to a diſſeiſin, that the diſſeiſee might not enter, and alſo, by ſome, that ſhort ſeiſin of one that had right to enter, gave him not ſo much freehold that he might have his aſſiſe againſt a diſſeiſor. So it appears in 12 *Hen.* 3. *Itin. Staff. tit.* Aſſiſe 428. & 429. 30 *Ed.* 1. *Itin. Cornub. tit.* Attaint 76. *Bracton fol.* 160. & 161. *Hengham*, (*) *pag.* 98. But ſee *Breton chap.* 42. to which (that wee may obſerve the opinions of that time) adde a caſe, adjudged before our Autor, upon this point of *Longa* or *brevis ſeiſina*, and reverſt in the King's bench. In 33 *Ed.* 1. *MS. fol.* 59. *b. John* le *fitz Aveline* brought a *Mort d'anceſtor* before Sir *Ralph de Hengham* and his companions, of the death of *John le Clerk* his uncle, againſt *Edmond* of *London* gardein of the houſe of Saint *Thomas* of *Acres*; the tenant pleads **pluis darrain ſeiſin** in *Aveline* mother to the demandant, who was ſeiſed after the death of the uncle. Iſſue upon this is join'd, and the Aſſiſe taken; they find **que apres la mort meſme celuy** Jon le Clerk **meme ceſty** Aveline **tant come le corps fuſt en la bere entra & l'eins fuſt reclamant come heir** Jon **& per un demy hour de jour ydemurra tan que ſur l'emporter du corps, ou ele ſe voleit eſtre l'eins tenus, vient le dit** Emon **& la oſta.** So are the words in my copie, verie anciently written; and to Sir *Ralph* and his companions (ſaies the book) it ſeem'd that *cele petite ſeiſin & en teu temps ne fuſt nul*, and ſo they adjudged that the demandant ſhould recover. But by writ of error, and upon the very point, that judgment was reverſt *quia ſola* (as the report is) *pedis poſitio vero hæredi ſeiſinam contulit*, **cy agard la court que** Edmond **reeit ſa ſeiſin &c. & ſes dammages, & eit** Jon **ſon reſcoverir per autre voie ſil voile.** And this reverſall agrees well with what our autor hath in the beginning of this chapter. See 3 *Ed.* 3. *in vet. Nat. Br. fol.* 126. *b. in Dum fuit infra ætatem.* But now its plain law, that the leſt time is enough for ſeiſin to him that hath right to enter, as in 8 *Aſſiſ. pl.* 25. 26. *Aſſiſ. pl.* 42. and elſewhere. The true meaning of *transfertur liberum tenementum in feoffatum &c. in Stat. Weſtm.* 2. *cap.* 29. may be had out of this old opinion. See *pag. prox.*

(*) Al. *continuò*.

(*) Hic infra 38.

ſic æquipollet quieta clamantia feoffamento. *Præſcriptio* ſimiliter & *præſumptio* fit aliquando loco tituli. verbi gratia. Aliquis ingreditur per diſſeiſinam & diſſeiſitus ætatis & ſuæ poteſtatis permittit diſſeiſitorem per magnum tempus tenere ipſum non eijciendo nec verſus ipſum impetrando actionem; quare præſumitur, ex quo per tantum tempus ſtetit in ſeiſina per aliquem titulum clamavit tenere. Et propter hoc ſi poſt magnum tempus eijciatur, competit remedium per breve *novæ diſſeiſinæ*. Mulieri etiam dotatæ, ſive tenenti per legem Angliæ, competit remedium per breve novæ diſſeiſinæ, ſi eijciantur quia donum viri in dote eſt quoddam genus perquiſitionis. Similiter adquiritur tenementum ad terminum vitæ viri ducendo mulierem, cujus hæreditas tenementum eſt; & ſub eodem genere comprehendi poteſt. Quorundam tamen ingreſſus cum ceperit per prædictos titulos vel ſub colore eorundem titulorum nunquam alicui facit liberum tenementum. Et illis, quibus dimittitur aliquod tenementum ad voluntatem, vel ad terminum annorum, licet a tam magno tempore tenuerint, cujus dimiſſio non poterit haberi in memoria, nunquam adquiritur liberum tenementum, niſi per conſequens factum videlicet per feoffamentum aut quietam clamantiam illius cui fuit liberum tenementum. Et hoc intellige quod liberum tenementum non adquiritur illi cui ſupradicto modo facta fuit dimiſſio, ſine facto illius cujus fuit liberum tenementum. ſed aliquando contingit quod hujuſmodi tenentes ad voluntatem vel ad terminum feoffant alios de facto, tamen de jure non poſſunt, & tamen per eorum feoffamentum, adquiritur feoffatis liberum tenementum, quod nunquam evenit per factum illorum qui nullam habent tenentiam. Et quod dicitur ſupra de felonia, ſciendum quod *felones* ſunt *ſuſpenſi*, *utlagati*, & alij de quibus dicitur hic & ſupra in *cap. de Dote* (*) ſecundo.

CAP. VII.

Quibus modis fit diſſeiſina.

SCiendum, quod, cum quis tenens realiter eijcitur de tenemento. item abſens, cum ingredi voluerit, eijcitur & repellitur. Item cum (*1) manuopus alicujus impeditur per (*2) ſuperfluoſam, & hoc in tenemento diu ante appruato, vel de tenemento de novo appruando. verbi gratia. Si qui vaſtum ſuum non prius appruatum redigat in culturam, ſalva tenentibus & vicinis ſufficiente paſtura cum libero ingreſſu & egreſſu, cum inceperit appruare impediatur, impeditor pro diſſeiſitore habetur. Item in paſcendo alterius ſeparale fit diſſeiſina ut in *ultimo ſtatuto* Weſtmonaſt. cap. XXIX. Item aliquando continuando poſſeſſionem a qua abjudicatur. verbi gratia. Divortium celebratum eſt inter virum & mulierem, ſi poſt divortium vir teneat ſe in hæreditate perquiſita in maritagio mulieris, ſtatim cum poſt divortium manuoperetur diſſeiſitor eſt. Item intrando per judicium quod non ligat, verbi gratia. *A.* implacitat *B.* de tenementis *C.* & fit judicium de tenementis cum tria exigantur ad judicium ſcilicet *Actor*, *reus* & *Judex*, & in iſto judicio deficiat unus trium, videlicet verus tenens qui dicitur reus, ille qui recuperat pro diſſeiſitore habetur. Eodem modo ſi in curia Comitis *Gloceſtriæ* recuperatur tenementum alicujus quod eſt de feodo Comitis *Warreniæ*; quia defuit ibi Judex, ille qui recuperat pro diſſeiſitore habetur. Et tamen illa judicia non peccant in forma, quia verus eſt ibi proceſſus ſed ſubſtantialia deficiunt. Non ſic eſt in falſis judiciis quæ habent ſua ſubſtantialia, ſcilicet actorem, reum & judicem (& his non exiſtentibus fit iniquum judicium) quia iſtud judicium ligat quouſque infirmetur, & ſolummodo competit recuperare per breve de *falſo judicio* & non per breve *novæ*

(*) *Tertio*; uti hac diſtinguitur editione.
(*1) *Al.* manuopere.
(*2) Nonnullis *vel per ſuperfluam*; alijs *ſuperſtitioſam*.

diſſeiſinæ. Item dicitur in caſu diſſeiſitor quando non per factum ſit ſed per advocationem in Curia. Et hoc eſt cum ille qui dimiſit terram ad terminum poſuerit ſe in tenementum ante terminum finitum & terminarius eum eijciat, ſi ille qui dimiſit terram ad terminum impetraverit *breve novæ diſſeiſinæ* verſus terminarium, clarum eſt quod ſi terminarius dicat ſe nihil habere niſi ad terminum & convincatur per aſſiſam quod terminarius ejectus ante terminum finitum vim vi repellendo ſe repoſuerit, impetrator nihil per aſſiſam recuperabit. Sed ſi falſo coram Juſtitiarijs clamaverit feoffamentum & contrarium convincatur per illam falſam clamationem factam in exhæredationem illius qui tenementa ei dimiſit, habeatur pro diſſeiſitore. Eodem modo ſi terminarius ejectus impetret breve *novæ diſſeiſinæ* verſus eum qui ad terminum ei dimiſit, convicto quod nihil aliud habuit quam terminum, per ſuam falſam clamationem, amittat terminum ſuum. Et eſt diſſeiſina de redditu in omni caſu, cum tenementum aliquod alicui obligatur in aliquo redditu ſive de eo ſive de alio teneatur & diſtrictio (*) recuſetur vel replegietur.

CAP. VIII.

Quibus Perſonis competit aſſiſa. *Exceptiones item* dilatoriæ & peremptoriæ. *De vocando in* auxilium. *per* eundem deſcenſum.

SCiendum eſt, quod quibuſcunque liberis & in ſtatu liberorum exiſtentibus, quod dicatur pro hijs qui in (†) *nayvitate* procreati ſunt, & cum à magno tempore fugerint & ad remota loca (10) extra *aſtrum* ſe tranſtulerint & tenementa perquiſierint, ſi ab illis eijciantur, competit eis remedium per breve *novæ diſſeiſinæ*, & contra veros dominos quia quouſque nativos in ſervitutem per judicium redigerint, ad tenementa ſeiſienda manum apponere non poſſunt. *Villanis* quidem in *Aſtro* commorantibus non competit hujuſmodi remedium verſus veros dominos non magis *de perquiſito*, quam de *villenagio*. Si tamen de *villenagio* vel de *perquiſitis* eijciantur per extraneos competit eis remedium per breve *novæ diſſeiſinæ*; quia in hoc caſu villanus non quoad verum dominum ſed quoad extraneos pro libero habetur. Eodem etiam modo (11) *Sokemannus* de *antiquo* dominico, licet contra dominum vel vicinum de eodem ſocagio placitare non poſſit niſi per *parvum breve de recto clauſum*, verſus tamen extraneum ſi eum eijciat, competit ei remedium per breve novæ diſſeiſinæ. Competit etiam liberis a magno tempore in ſervitutem redactis, illis videlicet quorum patres & avi

(*) See Mr. *Selden*'s Preface to *Fort.* II.

(†) Al. *nativitate.*

(10) *Extra Aſtrum*] All this paſſage, in the ſame words, is in *Fleta lib.* 4. *cap.* 2. whereby *Aſtrum* muſt be taken for the Lord's dwelling houſe, or ſuch like. See the cuſtomes of *Kent*; in partition, there, (*) **le aſtre demoꝛra al pune &c.** *pag.* 574. The elder times had alſo *homo Aſtrarius* for a houſholder (as I gheſſe) or in ſuch like ſignification. *Bracton lib.* 2. *cap.* 36. §. 7. ſpeaking of paiment of releifs; *Eſto quod hæres ſit* aſtrarius, *vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem & ſe dimiſerit, videtur quod nullo tempore jacebit hæreditas*; as if he had ſaid, *ſuppoſe the heir be houſeholder, or, as tenant to the Lord in life of his anceſtor &c.* and in *Fleta lib.* 1. *cap.* 47. **Frithboꝛgh** *eſt laudabilis homo aſtrarius*; and *extra aſtrum* in them, is to *Bracton, extra poteſtatem dominorum, fol.* 155. & 166.

(11) *Sokemannus*] This alſo is in *Fleta lib.* 4. *cap.* 2. and agrees with that which is called *Tractatus de antiquo dominico*, and in a very old *Engliſh* tranſlation of the Statutes is titled a Statut. being indeed only ſom lawiers anſwer (or in the nature of Civilians *Conſilia*, or ſuch like) to queſtions propos'd touching **ancien demeſne.** But the law in the yeer books is cleer, that to any reall actions or ſavoring of the realty, **auncien demeſne** is a good plea. See *Bracton fol.* 272. & *Breton cap.* 66. **de Gardes.**

(*) **The harth foꝛ fire ſhall remaine to the younꝛeſt ſonne.** *Lambarde* Peramb. *Kent.*

&

& quicunque anteceſſores à tempore quo currit *breve de recto* in ſervitutem redacti fuerint. quamdiù enim in *aſtro* morantur competit eis remedium ad liberum (*) ſtatum rehabendum per breve *Ne vexes*. Et ſi a tenemento eijciantur non competit eis aliud remedium quam per breve *novæ diſſeiſinæ*. Sciendum eſt, quod contra quamlibet perſonam; dum tamen verus nominetur tenens, quo in brevi non nominato, nihil impetranti acquiritur. Competit etiam aliquando viro contra uxorem in caſu in quo uxor profuga alienat tenementum viri ſui, vel etiam tenementum uxoris. Contra impetrantem competunt exceptiones aliquando *dilatoriæ* aliquando *peremptoriæ* brevis. Dilatoriæ; veluti ſententia *excommunicationis*. excipitur etiam contra impetrantem *quod nihil habet niſi ratione uxoris*, vel contra clericum qui nihil habet niſi *ratione eccleſiæ ſuæ*, de qua non fit mentio in brevi, vel quod *Villanus* vel *Sokmannus* eſt, de quorum diſcuſſione dicitur ſupra. Item excipitur contra virum & uxorem, ſi diſſeiſina facta fuerit mulieri ante matrimonium & conquerantur ambo diſſeiſiri. Caſſatur etiam breve ſi erratum ſit in *nominibus perſonarum*, *villæ*, aut *Comitatus*. Similiter ſi dominus queſtus fuerit ſe diſſeiſiri de redditu & convincatur quod ſeiſitus fuerit de redditu per manus villanorum, ſuper quo jacet breve *novæ diſſeiſinæ* de tenemento in dominico potius quam de redditu. *Peremptoriæ* brevis. eo quod alias aſſiſa tranſivit; ad quod requiritur quod de eodem tenemento inter eaſdem perſonas de eodem tempore. Item ſi quis clamat liberum tenementum ſive exprimat titulum ſive non, & recognoſcatur per aſſiſam quod jure ſucceſſionis intravit, & pendet inter eos placitum in Curia Chriſtianitatis de *Baſtardia*; quamdiu fuerit placitum in *Curia Chriſtianitatis* remanebit placitum in Curia Regis in ſuſpenſo: Competit etiam exceptio *quietæ clamantiæ*, *feloniæ præjudicatæ*, *exchambij* & conſimiles &c. In brevibus *aſſiſarum* & in omnibus aliis brevibus generaliter locum habet iſta exceptio, videlicet ſi tenens dicat quod *nihil clamat niſi cum uxore ſua conjunctim*. Et hoc tripliciter, vel quod fuerint ſimiliter feoffati, & tunc habet neceſſe oſtendere cartam, vel quod invenit uxorem ſuam ſeiſitam; antequam eam deſponſavit, vel quod tenementum petitum uxori ſuæ deſcendit jure hæreditario poſt deſponſationem. Item alia eſt exceptio ad caſſandum breve videlicet ſi tenens dicat *ſe nihil clamare niſi ad voluntatem talis* vel *ſe eſſe villanum alicujus*, vel *tenere de villenagio tali*; quo comperto vel recognito caſſatur breve. in quo caſu vel oportet petentem intrudere ſe in tenementum ſi poteſt vel impetrare aliud breve ſuper dominum ipſius tenentis & ſuper tenentem. Item poteſt excipi quod *tenens nihil clamat niſi ratione cuſtodiæ* talis minoris infra ætatem, qui in brevi non nominatur. Replicatio contra iſtam exceptionem poteſt eſſe quod *anteceſſor illius minoris non obijt inde ſeiſitus*, *nec die quo obijt habuit aliud in tenemento petito*. Si tenens dicat quod anteceſſor illius minoris jus habuit in tenemento illo, & iterum alia proponatur replicatio quæ vera eſt quod anteceſſor illius minoris aliquod habuit, ſed id quod habuit dimiſit ad plenum eidem petenti per feoffamentum, tunc ulterius diſtinguendum eſt, ex quo tenens cognovit anteceſſorem minoris aliquod habuiſſe &c. ſi anteceſſor illius minoris obijt &c. vel non, quod fieri non poteſt, ſine brevi in quo minor nominetur. quia dato quod *aſſiſa* tranſierit contra minorem, minor cum ad ætatem pervenerit non poſſet facere *attinctam*, quia fuit neutra pars in brevi priori, & ſic caſſatur breve. Alia eſt exceptio dilatoria quando reus dicit ſe *non poſſe reſpondere ſine ſuo participe*; quod eſt in caſu quando hæreditas deſcendit duabus ſororibus, aut pluribus vel exitui unius vel ambarum, & poſtquam hæreditas partita fuerit, ſi unus hæredum de parte ſua implacitatus fuerit, excipere poſſit quod tenet in proparte cum tali cohærede ſine quo non poteſt reſpondere & in hoc caſu percipiatur quod hæredes ſummoneantur ad reſpondendum cum ea ſi voluerint. Et ſi ad diem venerint & reſpondere voluerint cum participe audiantur & tunc procedat placitum verſus eos, tanquam verſus unum tenentem. Et ſi fortè ad diem datum non venerint nec eſſoniatorem miſerint, vel forte ad diem datum per eſſonium non venerint, reſpondeat tenens ſolus. Sed ſanè intelligatur quod illa exceptio locum habet quando res

(*) Al. *tenementum*.

petitur per jus quod competere poſſet actori ante mortem communis anteceſſoris. Quia ſi quis petat per aliquod jus quod ei competere poſſet per factum cohæredis poſt participationem hæreditatis, ſatis clarum eſt quod in hoc caſu non habebit auxilium participis. quia poteſt eſſe quod cohæredes rem unam litigioſam vendiderint, excambiaverint vel per judicium per malam defenſionem amiſerint, vel per feloniam forisfecerint antequam cohæres de re litigioſa fuerit implacitatus. In quo caſu dicendum eſt quod de nihilo non eſt auxilium petendum. Dictum eſt qualitèr petitur auxilium participis quando cohæredes implacitantur de tenementis. Sed contingit aliquando quod *ſectæ Curiæ*, *Juriſdictiones*, *libertates*, *ſervicia*, & *conſuetudines* veniunt in judicium inter querentem & unum de participibus tenentem manerium vel tenementem ad quod ſpectant hujuſmodi *ſectæ*, *juriſdictiones*, *libertates ſervicia* & *conſuetudines* in quo caſu, tenendum eſt quod ſicut tenens habere debuit auxilium participis de *principali* ita habebit de *acceſſorio*. Dum tamen illud acceſſorium ad annum proficuum extendi poſſet. hoc obſervata tamen de hujuſmodi ſupradictis quæ fuerunt in poſſeſſione communis antecedeſſoris antequam hæreditas fuerit partita & quæ ad unicum hæredem per extentam proficui devenerunt. Et ſic excluditur objectio. In caſu, ſi unus hæredum levaverit injuſtas exactiones & conſuetudines de propria ſua injuria in quo caſu non erit auxilium participis petendum. Alius eſt caſus, quo tenens dicit quod non poteſt ſine alio reſpondere videlicet cum Rector implacitatus fuerit de jure eccleſiæ ſuæ dicit quod *invenit eccleſiam ſuam ſeiſitam* & quod non poteſt ſine patrono & loci Dioceſano reſpondere, in quo caſu præcipiatur patrono & loci dioceſano ſummoneri. Et ſi venerint vel non venerint vel diem datum per eſſonium ſuum non ſervaverint, ſervetur proceſſus ſupradictus. Alius eſt caſus conſimilis quando tenens per legem Angliæ dicit quod *tenementum petitum fuit jus uxoris ſuæ de qua procreavit quendam talem ſine quo non debet reſpondere.* Summonebitur tunc ille & poſt ſummonitionem ſervetur proceſſus ſupradictus. Sed differunt iſti duo caſus ultimi à ſuperioribus, quia ſi tenens in iſtis duobus caſibus ultimis amittat rem petitam nullum erit ſuum recuperare ſuper epiſcopum, patronum, aut hæredes, ſed in ſuperioribus caſibus de participibus tenens obſervato ſuo ordine, ſi amiſerit, recuperabit ſuper cohæredem per proceſſum ulterius procedendi. Sed unam proprietatem habent omnes iſti caſus ſupradicti quod ſive cohæres ſive patronus ſive hæres hæreditatis quæ tenetur per legem Angliæ fuerint infra ætatem, generaliter remanebit loquela uſque ad ætatem hæredis, & per hoc quod dicitur ſupra *quod rector invenit eccleſiam ſuam ſeiſitam* ſatis excluditur dubitatio ſi rector de ſuo perquiſito vel de ſua intruſione aliquid appropriat eccleſiæ ſuæ, in quo caſu non poteſt auxilium patroni aut Dioceſani ſui petere. Sed eſt caſus quando mulier dotata implacitatur de dote ſua in quo caſu diſtinguendum eſt utrum petatur verſus eam tenementum vel tenemento annexum, ut *juriſdictio* vel *ſecta* & hujuſmodi in valorem partis dotis ſuæ extenſa. In primo caſu vocare poteſt ad warrantiam tanquam warrantum dotis ſuæ. In ſecundo caſu cum non jaceat vocare ad warrantiam, habet dicere quod non poteſt ſine hærede reſpondere, & tunc ſummonebitur hæres ad reſpondendum ſicut prædictum eſt ſi voluerit, in quo caſu ſervabitur proceſſus ſupradictus. Et in utroque caſu ſi uxor pro defectu warranti hæredis amiſerit, recuperabit mulier excambium non tamen ad plenum valorem rei amiſſæ. Cujus ratio bene patet ſubtiliter intuenti. In aſſiſa mortis anteceſſoris & in aliis brevibus poſt viſum terræ jacet exceptio de *non tenura*; quæ ſic debet proponi. *dicit* B. *quod non debet* A. *ad breve ſuum reſpondere eo quod non tenet integram terram verſus eum petitam, eo quod talis inde tantum tenet, & talis tantum inde tenet*, quo comperto per inquiſitionem vel recognitionem caſſabitur breve Replicatio contra iſtam exceptionem. *B. tenuit die quo breve fuit impetratum & hoc in feodo vel in dominico vel ſi* illa tenuit de *B.* ad *terminum annorum* vel in *villenagio* vel *ad voluntatem*, quo comperto, vel recognito, ſtabit breve. Et ſciendum quod in brevibus *Aſſiſarum* poteſt proponi iſta exceptio cum aliis exceptionibus tangentibus verba brevis. Sed in aliis brevibus ſi proponatur cum effectu, cum ea non poſſunt proponi

aliæ exceptiones, ſed ſecundum quod per eam compertum fuerit, fiat judicium & hoc diverſimode. quia in brevibus *Eſchaetæ*, de *ingreſſu forma donationis*, & *conſanguinitatis*, & aliis in quibus non jacet *duellum* vel *magna aſſiſa*, ſi inquiſitio facit pro excipiente, tunc caſſabitur breve & ſic eſt dilatoria. Si pro parte adverſa recuperabit petens tenementum, ſalva tamen tenenti actione per *breve de Recto*. Et ſi in brevi de Recto proponatur iſta exceptio cum effectu adimit ei jus contra quem tranſivit. Proponitur aliquando exceptio huic ſimilis, cum non ſit, ſic dicendo, *quod tenens verſus quem petuntur viginti, non tenet viginti eo quod tenet niſi decem.* in quo caſu ſi non poſſit dicere quis teneat reſiduum, oportet reſpondere de eo quod tenet. Tam in brevibus *aſſiſarum* quam in aliis brevibus jacent exceptiones dilatoriæ ſic dicendo. *Tu petis verſus* A. *tantum & verſus* B. *tantum, ac ſi uterque ſciret ſuum ſeparale & ipſi tenent in communi*, quo comperto eodem modo erit ut ſupra. Et eſt alia exceptio in aſſiſa *mortis Anteceſſoris* ſic. *tu petis de morte* A. *& verum eſt* A. *obiit ſeiſitus ſed poſt ejus mortem intravit* B. *filius vel ſoror vel neptis vel conſanguinea & de ſicut non petis ſeiſinam ultimi ſeiſiti peto judicium*, quo comperto caſſabitur breve ſed fallit hoc caſu. in caſu ſcilicet in quo non intrat verus hæres, licet habeatur pro conſanguineo, de cujus ſeiſina non caſſabitur breve, pro eo maximè quod ſi ipſe inventus eſſet tenens & ſeiſitus potius haberetur pro injuſto deforciatore quam pro vero tenente. Item quidam pro ratione feoffamenti quod defunctus ei fecit, poſt mortem defuncti ingreditur tenementum & ſub colore feoffamenti eſt ſeiſitus, licet feoffamentum ſit vacuum, venit poſt verus hæres & ejicit ſic ſeiſitum, per quod tenementum recuperabitur per breve *novæ diſſeiſinæ*, & poſtmodum verus hæres per *aſſiſam mortis anteceſſoris* ſui petat, & excipiatur contra eum quod ſeiſitus fuit poſt mortem anteceſſoris ſui, replicare poterit quod illa ſeiſina adnullari poterit vel adnullata fuerit per aſſiſam *novæ diſſeiſinæ* per exceptionem, quo comperto non valebit ſua exceptio. Item duo cohæredes ſunt, unus anteceſſor, & unus ingreditur in tota hæreditate & ejicitur poſtmodum, ſi nomine amborum perquiratur breve mortis anteceſſoris, & excipiatur quod unus ipſorum fuit ſeiſitus poſt mortem anteceſſoris, non propter hoc caſſabitur hoc breve, pro eo quod & ſunt quaſi unus hæres & per factum unius, non adnullabitur actio amborum cum ambo non fuerint ſeiſiti. Alia eſt exceptio in brevi *mortis anteceſſoris* dicendo, *tu petis tenementum de morte talis patris ſui & bene cognoſco quod obijt ſeiſitus & poſt mortem ejus ego intravi, ut filius ſuus, nepos, & ſumus de eodem ſanguine & clamamus per eundem deſcenſum unde peto judicium.* propoſita exceptione prædicta, prædictis verbis, niſi in contrarium objiciatur *baſtardia* vel *diverſitas conſanguinis* caſſatur breve, & revertetur ad *breve de Recto*, in quo non jacet duellum nec magna aſſiſa. Sed quid erit ſi tenens vocet ad warrantiam, & warrantus poſtquam warrantizaverit vel ulterius alium vocaverit ad warrantum? poſtquam warrantizaverit, caſſabitur breve per eundem deſcenſum. Et ſimiliter ſi tenens per legem Angliæ dicat *quod nihil clamat niſi ratione hæreditatis uxoris ſuæ.* Et hæres poſtquam ſummonitus fuerit caſſat breve per eundem deſcenſum. Et ſi poſtmodum petens perquirat breve *de Recto*, nunquid poterit tenens defendere ſe per *duellum* vel per *magnam aſſiſam*, cum non ſit de ſanguine petentis? certe non. quia ex quo alias warrantus ſuus ceſſavit breve per exceptionem ejuſdem deſcenſus, in *brevi de recto*, non magis defendit ſe per *duellum* vel per *magnam aſſiſam*, quam defenderit ille qui prius caſſat ſi compertus fuiſſet tenens.

Summæ Parvæ

Radulphi de *Hengham*

FINIS.

INDEX

TO

Mr. *Selden*'s Preface and Notes.

Adultery, how formerly punished. Page 6
Aula Regia. ibid.
Appeals, how and where formerly determinable. 7
Annus Biſſextilis, *or Leap Year, whence.* 10, 11
Affidati. *Affidavit.* 13
Age, Woman's. 34
Aſtrum, *quid.* 39
Homo Aſtrarius. ibid.

Bracton, Henry de. III, 5, 6.
Biſhops, &c. titled Dei Gratia. 3
Burgagium liberum, *what.* ibid.
Brevia, *King's Writs, what.* ibid.
Breve. ibid.
Britton, John le, *Biſhop of* Hereford. 5
Bracton *explained.* 8
Breve de pace. 9
Annus Biſſextilis, *or Leap Year, whence.* 10, 11
Henry de Bathonia. 17

Carves. 4. *Carucage, what.* ibid.
Carves and Hides made anciently the Diviſion in levying Hidage and Carucage. 5
Curia major, *what.* 6
Chaunce Medley, *whence and what.* 7

Day given at the Tower, *the Reaſon.* Page 10
Ad horam nonam] *From nine a Clock taken for half a Day.* 22
Duellum. 27, 32
Dower, ad Oſtium Eccleſiæ, *what part to be aſſigned.* 33
Of Dower. 34
Demembratus. 33
Decapitatus. ibid.

Eſcuage, what? Several Sorts of. 4
Of Eſſoins. 13, 21, 28, 31

Filius. *Fitz.* 2
Furtum. 6
Falſifying the Lord's Court, what? 7, 13
Law in Feoffments, what it was. 28
Puniſhment of Felony in Wincheſter. 33
Frithbough. 39

Gainage. 5
Ley gager, *a Trial in many Actions.* 15, 17

Hengham, Sir Ralph de, *who He was, when He lived and died.* I, II
Hengham Magna & *Hengham* Parva. II
Hides. 4. *Hidage, quantity.* 5

Hunteſium.

INDEX to Mr. *Selden*'s Preface and Notes.

Hutesium. Hutesium & Clamor. Page 7

Homage and other Services Cause of Warranty. 24

——— ibid.

Judgment, when given for Loss of a Member. 6

Judgment of Death. ibid.

Of Justices in Eire. 9

Infalistatus. 33

Κηϛ⊙. 1

Κηρωμα. ibid.

Lewis XI. *of* France *forbad* Francis *D. of* Bretagne *to be styled* Dei Gratia. 3

Petty Larcenies, the Punishment formerly. 6

Ley gager, *a Trial in many Actions.* 15, 17

Poni ad Legem. 15

Habere Legem. 28

Writ of Right, Limitation. 30

Periculum Vitæ & Membrorum. 5, 6

Judgment, when given for Loss of a Member. ibid.

Loss of a Member. ibid. *In what Cases.* ibid.

Membre pur Membre. ibid.

Trials of Mayhem, how formerly. 6

Melletum. Medletum, *what.* 7

Chaunce Medley, *whence and what.* ibid.

Of Marriage without the Lord's Consent. 34

Primicerius, *what.* Page 1

Prothonotaries, what. ibid.

Ploughland. 5

Punishment Capital. 6

Contra pacem Domini Regis. ibid.

— Contra pacem Vicecomitis. ibid.

— *The Distinction observed.* ibid.

Poni ad Legem. 15

Non plevine. 17

Roberie and Theft punished in a County, or Sheriff's Court. 6

Writ of Right, Limitation. 30

Secundicerius. 1

Socage, Free, what. 3

Seditio. 5

Ultimum Supplicium. 6

Of what things the Sheriff's Court formerly held Cognizance. ibid.

Without Writ the Sheriff can't hold Plea de transgr. contra pacem Domini Regis. 7, 9

Of Seisin. 37

Sokemannus. 39

Tulth, *what.* 5

Trials of Mayhem, how formerly. 6

Toper, *what?* 8

Periculum Vitæ & Membrorum. 5, 6

Of Voucher. 24

Weylond, Thomas de. 1

Wainagium, *what.* 5

Common Whore, Punishment formerly before the Marshal if she followed the Court, for the 1st, 2d, &c. Offence, what? 6

FINIS.